TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 306.

LYDIA BRADLEY, PLAINTIFF IN ERROR,

vs.

H. W. LIGHTCAP.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JUNE 1, 1903.

(18,957.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 15, 1903.

c Original.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said plea and suit between Lydia Bradley, appellant in said supreme court of Illinois, and H. W. Lightcap, appellee in said supreme court of Illinois, the said suit being an appeal from the circuit court of Fulton county, Illinois, in a certain bill in equity for injunction and relief, wherein said Lydia Bradley was complainant and H. W. Lightcap defendant; wherein was drawn in question the validity of a statute of and of an authority exercised under the United States and the decision was against their validity; and wherein was drawn in question the validity of a statute of and of an authority exercised under said State on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution of and a statute of the United States, and the decision was against the title, right and privilege and exemption specially set up and claimed under such clause of said Constitution and under said statute of the United States;— a manifest error hath happened, to the great damage of the said Lydia Bradley, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of May, in the year of our Lord one thousand nine hundred and three.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL,
Clerk of the Circuit Court of the United States
for the Northern Dist. of Illinois.

Allowed to operate as a supersedeas, by
BENJAMIN D. MAGRUDER,
Chief Justice of Supreme Court of Illinois.

d [Endorsed:] 2846. Original Supreme Court of the United States. Lydia Bradley plaintiff in error *vs.* H. W. Lightcap defendant in error Writ of error. 2.24 Copy deposited for the defendant in error in the clerk's office, U. S. circuit court, northern district of Illinois. Copy deposited for the defendant in error in the clerk's office of the supreme court of Illinois at Springfield Illinois also.

UNITED STATES OF AMERICA, } *ss:*
Seventh Judicial Circuit, Northern District of Illinois, }

I, *Marshall E. Sampsell*, clerk of the United States circuit court in and for said seventh circuit and northern district of Illinois, *do hereby certify* that in the cause wherein Lydia Bradley is plaintiff in error and H. W. Lightcap is defendant in error, more fully described in the within and foregoing copy of writ of error, a true copy of the writ of error issued by me on the eighteenth day of May, A. D. 1903 (and of which the within and foregoing copy of writ of error is also a true copy), was on the eighteenth day of May, A. D. 1903, deposited in my office in Chicago for the defendant in error.

In witness whereof, I have hereunto set my hand and affixed the seal of the said United States circuit court for the northern district of Illinois, this 18th day of May, A. D. 1903.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL,
Clerk Circuit Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, Northern Division, }

I have served this writ within my district by reading the same to and in the presence and hearing of the within named H. W. Lightcap, at the same time delivering to him personally a true copy thereof on the 22nd day of May, A. D. 1903.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

1 service	2.00
5 miles	.30
	2.30

e In the Supreme Court of Illinois.

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } No. 2865. Appeal from Fulton County.

I, Christopher Mamer, clerk of the supreme court of Illinois, do hereby certify, that on the 26th day of May, in the year of our Lord one thousand nine hundred and three, a copy of the foregoing writ of error for the defendant in error, was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said supreme court, this 26th day of May, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

f In the Supreme Court of Illinois.

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } No. 2865. Appeal from Fulton County.

I, Christopher Mamer, clerk of the supreme court of Illinois, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages numbered from 1 to 137 both inclusive contain a true, perfect and complete copy of the record and of the assignment of errors and of all proceedings in the case had in said court, including a certified copy of the opinion of said court as the same remain of record and on file in my office, and that pages 122 to 137 both inclusive, contain a true and correct copy of the petition and order for writ of error, bond for costs and the assignment of errors upon said record filed in my office on the 26th day of May A. D. 1903, the original of which remains on file in said court.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed at Springfield, Illinois, this 26th day of May in the year of our Lord one thousand nine hundred and three.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

1 At a supreme court, begun and held at Springfield on Tuesday, the second day of December, in the year of our Lord one thousand nine hundred and two, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice, Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general, Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that, to-wit: on the second day of December, A. D. 1902, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of Fulton county, which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Fulton, }

Pleas before the Honorable John J. Glenn, one of the three judges of the ninth judicial circuit of the State of Illinois and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house in the city of Lewistown, in said county, on the nineteenth day (the same being the third Monday) of May, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

Present: Honorable John J. Glenn, judge. E. W. Keefer, master in chancery, J. C. Severns, clerk, L. C. Fouts, sheriff.

Attest: J. C. SEVERNS, *Clerk.*

Court opened by proclamation.

And be it remembered that afterwards, to-wit: on May 26, 1902, the same being one of the regular days of said term of said court, a certain bill for injunction was filed with the clerk of the court, which said bill is in the words and figures following, that is to say:

3 STATE OF ILLINOIS, } ss:
County of Fulton, }

In the Circuit Court in and for said County of Fulton, Being in the Ninth Judicial Circuit of Illinois.

To the honorable the judges of said court, sitting in equity:

Your oratrix, Lydia Bradley, respectfully represents unto this honorable court that she is a citizen of the county of Peoria in the State of Illinois, residing at the city of Peoria; that the defendant H. W. Lightcap, is also a resident of the State of Illinois, his place of residence being in the county of Cook.

That heretofore, on the 30th day of June, 1867, oratrix was the owner and holder of a certain mortgage given by Thomas B. Breed-

love to secure the sum of $19,616.00 on 1200 acres of land in the county of Mason, State of Illinois, described as the northeast quarter of section twenty-two (22), the east half of the southeast quarter of section twenty-two (22), the south half of section twenty-three (23) and all of section twenty-six (26), in township twenty-three (23) north, range six (6) west of the third principal meridian; that afterwards said Breedlove and wife conveyed said premises, subject to said mortgage, to Benjamin S. Prettyman; that afterwards on the 13th day of August, 1868, Benjamin S. Prettyman conveyed a part of said premises, to-wit: the northeast quarter and the north east quarter of the southeast quarter of section twenty-two (22), the south half of section twenty-three (23) and the north half of the north half of section twenty-six (26), township and range aforesaid, to Absalom McCune, and on the same day procured from said Absalom McCune a trust deed conveying the last above described premises to E. G. Johnson as trustee for oratrix, to secure the payment to oratrix of three notes which were drawn payable to her order, each for the sum of $5000, due in one, two and three years from date; that afterwards
4 said Prettyman taking the said Absalom McCune trust deed and notes to the agent of your oratrix delivered them to him in part payment of said Breedlove indebtedness and secured from her a release of all the lands not included in the said McCune trust deed, being about 520 acres; that in and by said trust deed it was provided that in case default should be made by said McCune or his heirs, executors or administrators in the payment of said money or any part thereof, or in the fulfillments of the covenants and duties therein contained or imposed or any of them, that then and in that case, on application of your oratrix or the legal holder of said notes, having first given 20 days' notice by publishing the same in a public newspaper printed in the county where said premises are situated, it should be lawful for said E. G. Johnson, his heirs, assigns or attorneys duly authorized to sell the said premises at public sale at such time and place as said Johnson, or his said heirs, assigns or attorneys might appoint, and upon making sale as aforesaid to make and deliver to the purchaser a good and sufficient deed of conveyance in law for the same in fee simple; that afterwards on the 13th day of November, 1868, said Absalom McCune and wife re-conveyed the 680 acres last above described to said Benjamin S. Prettyman; that oratrix held said notes of McCune until sometime in 1871, when she discovered that he had departed from the State of Illinois after the execution of said papers and his residence could not be ascertained; that the lands covered by said trust deed were swampy and practically worthless, and that the portion she had released was the only valuable land in the original Breedlove mortgage; that no taxes had been paid on said 680 acres of land in said McCune trust deed from the date of said trust deed. Thereupon oratrix investigated and found said lands to be swampy and worthless and vacant and unoccupied, and took possession of said lands, and redeemed

said lands from tax sales and paid the current taxes, and after-
5 wards at the March term, 1872, filed a bill in chancery in the circuit court of Mason county, against said Prettyman, McCune and all other persons interested in said real estate, alleging that she had been induced to accept said McCune notes by fraudulent misrepresentations as to the value of the lands upon which they were secured, and praying the court to set aside the release of said Breedlove mortgage and grant a foreclosure thereof upon said 1,200 acres of land; a copy of which bill (except the exhibits thereto) and of the answer of said Prettyman thereto is filed herewith and made a part hereof as "Exhibit A." At the same time and while said bill was pending, in the summer of 1872 oratrix personally entered on said lands and employed one Allison Breedlove, who resided in the immediate vicinity, as her agent and representative to hold and look after said 680 acres of land for her, and put him in charge thereof to rent the same for pasture and cut hay from such lands as were dry enough, agreeing to give him one-half of the net proceeds arising therefrom; that said Breedlove on her behalf and as her agent held active possession of the property and used it in the manner aforesaid, putting up fences as they were needed to keep in stock and cutting and selling hay from such portions of the property as could be mowed, and continued in actual, open, visible and exclusive possession of said 680 acres of land until 1878, at which time oratrix leased all of said lands to one John Coddington and ditched and drained the same so that they could be farmed, and said Coddington received the actual possession of the same from said agent of oratrix, said Breedlove, and from that time forth said Coddington was in the actual, open, visible and exclusive possession of said lands as tenant of oratrix, and gradually reduced them to cultivation, fenced and improved them, erected suitable farm buildings and reduced all of said property to a high state of cultivation. That oratrix joined in forming a drainage district by which all of said lands were thoroughly drained and thereby became of great value as farming lands; that after
6 all the title and right of redemption of said Prettyman had expired and become barred and lost, and after the expiration of fifteen months from and after the master's sale in 1879 hereinafter mentioned was made, and prior to the commencement of the ejectment suits hereinafter mentioned, and relying on her absolute and complete right and title in and to the said 680 acres of land and upon the bar and extinction and loss of the right of equity of redemption of said McCune, or of those claiming under him subsequent to said trust deed to said Johnson your oratrix expended about $5 000 in such drainage district, about $5,000 in improvements and over $5,000 in current taxes upon said property; and that your oratrix by her tenants has remained in actual, open visible and exclusive possession of said 680 acres of land continuously since November 1871, to the present time, and still remains in such possession; and that she has all said time been and is in such

actual possession as owner, claiming to be the owner in fee in said premises.

That said bill in chancery in said circuit court of Mason county was contested by said Prettyman and was pending in said court, until 1879, at which time a decree was rendered by said court adverse to the complainant's prayer, ordering and decreeing a foreclosure of the said McCune trust deed instead of a foreclosure of the said Breedlove mortgage as prayed; a copy of said decree of foreclosure is filed herewith, marked "Exhibit B" and made a part hereof by reference. That pursuant to said decree the lands in said McCune trust deed were exposed for sale by the master in chancery, and oratrix, who was in possession and claiming to own said lands, in order to prevent an adverse claim arising by means of such sale, procured the said lands to be struck off to her for the sum of $10,000. which was applied upon the amount found due upon said McCune notes; leaving a deficit still due from said McCune to her of $21,000.

No personal judgment was obtained against said McCune,
7 who had left the State of Illinois, the service upon him being by publication, but the decree provided that said McCune should remain liable to oratrix for the deficiency remaining after said sale; but no part of said deficiency has ever been paid nor has said McCune returned to this State.

Oratrix further shows that the time allowed by said decree for redemption of said lands from such sale expired on the 27th day of January, 1881, and that no redemption or effort to redeem was made by said Prettyman, McCune or any other defendant in said action, nor did either of them assert any claim to said property or the possession thereof, but oratrix was then and thence continued in uninterrupted, actual, exclusive, adverse possession by her tenants, of the said 680 acres of land hostile to all the world besides; and has thence hither- continued and still continues in such actual and exclusive and adverse possession. That in the year 1885 said E. G. Johnson died intestate leaving him surviving his widow Aurilla E. Johnson, who was his administratrix, and the following named children, viz., Austin F. Johnson, Corilla J. Miller, Harriet A. Johnson, Mary G. Alfs and Nellie K. Brinton, who were his only children, and said widow and children were his only heirs at law—and who were all living and of full age on the 11th day of June, 1894; that on said last named date said heirs at law of said E. G. Johnson, deceased; in pursuance of the power conferred upon them by said trust deed, sold said lands at public sale, in pursuance of due public notice duly published as provided for in said trust deed; that at said sale your oratrix, in order to prevent an adverse claim arising by means of said sale, was a bidder and was the highest and best bidder, and said lands were struck off to her at said sale for the sum of $35,000. And on said last named date in pursuance of said sale said heirs at law of said E. G. Johnson conveyed said lands
8 to your oratrix by an absolute deed of conveyance in fee simple in conformity with the power contained in said Mc-

Cune trust deed, which deed by said heirs at law is ready to be produced by your oratrix.

That long afterwards on the 30th day of November, 1894, there was placed on record in the recorder's office of Mason county, Illinois, a quit-claim deed from said Benjamin S. Prettyman to the defendant, which purported to convey to said defendant said Prettyman's interest in said lands, and purported to have been made and executed on the 4th day of September, 1893. When said deed was in fact made, executed or delivered your oratrix is not informed save by the record of said deed, but she charges that the same was not made, executed or delivered until after said 11th day of June, 1894, and shortly before the recording thereof on November 30th, 1894. But oratrix alleges that at the times when said conveyance was made and recorded your oratrix was in the actual, open and visible possession of said 680 acres by her tenants as aforesaid, and that said Lightcap was by such possession charged with notice of the rights, title, claims and equities of your oratrix; and your oratrix upon information and belief charges that said Lightcap had at and before said conveyance to him actual notice and knowledge of the rights and equities of your oratrix, and that no actual, valuable or real consideration was paid by the defendant, Lightcap, for said 680 acres of land, or for the said conveyance thereof;—and that said Lightcap is contriving how he may deprive your oratrix of her said property under color of the certain statute of the State of Illinois, approved March 22, 1872, in force July 1, 1872, hereinafter referred to and quoted, and is subjecting your oratrix and causing her to be subjected to the deprivation of her rights, privileges and immunities in and to said lands, and her property, title and vested rights therein secured by the Constitution and laws of the United States and by the constitution and laws of Illinois and by the law and practice of this people's court of equity by the certain action of ejectment and proceedings therein
9 and means hereinafter set forth; that said deed of conveyance from said Prettyman to said Lightcap is a cloud upon the title of your oratrix and is being used by him in order to accomplish the deprivation of your oratrix as aforesaid, contrary to section 1979 of the Revised Statutes of the United States against such causes and deprivations expressly made and provided. And said defendant is contriving now to wrong and injure your oratrix by claiming to be the owner of said real estate and by trying to take and keep possession thereof, and by denying and slandering your oratrix's title to and right of possession thereof, and which acts, doings and pretenses of defendant are contrary to equity and to the manifest injury of your oratrix in the premises.

On the 13th day of July, 1895, the defendant herein commenced actions of ejectment against the tenants of oratrix in possession of said lands, in the circuit court of Mason county, claiming to be the owner of said lands in fee simple. These cases were consolidated and oratrix as landlord defending was substituted as defendant in said suits, and at the March term, 1896, a trial was had in the cir-

cuit court of Fulton county, to which the cases had been transferred on the motion of your oratrix, resulting in a finding for defendant therein of not guilty, and a judgment in favor of defendant therein. From this judgment the defendant herein appealed to the supreme court of the State of Illinois and at the October term, 1898, that court handed down an opinion reversing said judgment and remanding the cause. At the same term oratrix presented a petition for rehearing, which was allowed, and at the December term, 1896, the case was re-argued. October 19th, 1899, the said supreme court of the State of Illinois re-affirmed its former opinion, but afterwards of its own motion granted a second re-hearing and the case was again argued before the court at the February term, 1900. On the
10 19th day of October, 1900, the final opinion of the supreme court of the State of Illinois was filed, adhering to its order reversing the judgment and remanding said cause for further proceedings in accordance with the views therein expressed. A copy of said opinion is published in volume 186 of the reports of cases at law and in chancery determined in the supreme court of Illinois at pages 510 to 536 thereof and is ready to be produced, and is here referred to as "Exhibit C" and made a part hereof by reference.

That the controversy involved in said litigation was as to the effect of the statute of the State of Illinois, section 30, chapter 77, approved March 22, 1872, in force July 1, 1872, which provides as follows:

'When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor at any time within five years from the expiration of the time of redemption. The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the purpose. If the time for redemption shall have elapsed before the taking effect of this act, a deed may be given within two years from the time this act shall take effect. When the deed is not taken within the time limited by this act the certificate of purchase shall be null and void; but if such deed is wrongfully withheld by the officer whose duty it is to execute the same, or if the execution of such deed is restrained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof restrained shall not be taken as any part of the five years within which said holder shall take a deed.

In the construction of this statute the supreme court of the
11 State of Illinois in its said final opinion used the following language:

'Before the enactment of the statute rendering a certificate of purchase null and void at the expiration of five years, this court had fixed a limitation which it deemed equitable in Rucker *v.* Dooley, 49 Ill. 377, and when the legislature, acting within their unquestionable powers, changed the rule by this statute, it was upheld as valid in Rhyiner *v.* Frank, 105 Ill. 326. The effect of

the statute has been several times considered, and it is no longer an open question. In Seeberger *v.* Weinberg, 161 Ill. 369, the court, after referring to the statutes said (p. 380): 'If, then, it be assumed, as seems most probable, that Seeberger failed to obtain a master's deed, his right to obtain such a deed is barred by limitation and his certificate of purchase has ceased to be of any validity.' Whether the lapse of time is to be given the effect of extinguishing his right or of merely barring his remedy, he has no further title or interest in the premises described in the certificate, which either he or his grantee can enforce, either at law or in equity. At the expiration of five years he became, for all practical purposes, a stranger to the property, and had no more dominion over it or power to convey it than he would have had if he had never had any interest therein. The statute above referred to was considered by this court in Rhyiner *v.* Frank, 105 Ill. 326, and it was there held that where land was sold on execution, and the sheriff's deed was not taken out within five years from the expiration of the statutory period of redemption, the certificate of purchase became void, so that a sheriff's deed subsequently issued thereon is a nullity and passes no title. So in Peterson *v.* Emerson, 135 Ill. 55, it was held that after the expiration of the five years given by the statute for taking out a master's deed the certificate
12 became a nullity, and a court of equity cannot compel or authorize the execution of a deed to the purchaser or his assignee by the officer whose duty it is to make such deeds. Such being the condition of Seeberger's title, it is difficult to see upon what legal or equitable principle he can now be entitled, as against the grantees of Farr, to any portion of the relief prayed for in the bill. His certificate of purchase being *functus officio* and void, he certainly could have no remedy against the heirs or representatives of Farr if they had still retained their interest. No remedy could have been asserted by him upon the certificate, as that had become a nullity; nor could he have enforced any remedy upon the original mortgage, as that remedy had been completely exhausted by the foreclosure and sale." Again in Brown *v.* Ridenhower, 161 Ill. 239, the decisions of the court were reviewed, and it was held that the holder of a certificate of purchase which had become void under the statute has no remedy against the grantees of the mortgagor; 'that he can assert no remedy upon the certificate as that has become a nullity and can enforce no remedy upon the original mortgage as that remedy was exhausted by the foreclosure and sale.' The court repeated what was said in Seeberger *v.* Weinberg, that the purchaser had no further interest in the premises.

In Peterson *v.* Emmerson, 135 Ill. 55, it was held that a purchaser whose certificate had been barred by the statute of limitations has no equitable right to a title. In that case, Elizabeth Emmerson, who was a purchaser under foreclosure in 1871, and had been in possession of the premises since early in 1872, but had not taken any deed on her certificate of purchase, filed her bill to procure a deed. The court said (p. 60): 'It is sticking in the bark to say, that notwith-

standing the certificate is null and void, yet the sale which it was given to evidence has such vitality and force that a court may decree, by virtue thereof, the peremptory and absolute transfer by its officer of the property and title of one person to another and different
13 person. Such action on the part of the court is a virtual annulment of the mandate of the statute and an infringement of vested legal rights. * * * It does not alter the case that defendant in error has been in actual possession of the land since 1872, claiming ownership, and has paid all the taxes assessed thereon. Such acts do not — take the case out of the statute as to justify the transfer to her of the legal title vested in the heirs of the mortgagor. If she has gained any rights by virtue of such possession, claim or ownership and payment of taxes, the courts will, doubtless, if called upon, protect her therein; but surely the existence of such rights, if any there be, does not afford just and equitable grounds for transferring to her a legal title to which she is not entitled under the law of the land.'

Counsel urge that a statute of limitation cannot transfer title, and therefore the failure to take a deed did not transfer title to plaintiff. There is no pretense that a statute of limitation can transfer title, but the certificate of purchase was never color of title. It conferred a right to obtain a title, and recited that at a certain time and upon a certain condition the holder would be entitled to a deed conveying the title; the right so assured to the defendant by the certificate became barred, so that no deed could be taken. The statute took away no vested right or title, but merely provided for the neglect of the defendant to take out a deed, so that the right to receive a deed conveying the legal title was lost. All limitations are in the same category. As against every right, except that of the purchaser, the law recognizes the mortgagor or his grantee as the owner of the premises, and her right and lien have been barred and the title has been freed from it.'

But your orator respectfully shows that the statute thus construed by the court as divesting her of all right, title or interest to said premises by reason of her failure to take out a deed on the certificate of purchase hereinbefore set forth was enacted after the date of the
14 said McCune trust deed and the said case of Rucker *v.* Dooley, 49 Ill. 377, referred to by said supreme court as having established a limitation upon the time for taking out a deed on such a sale at twenty years was not decided until September, 1868, more than a month after the date and execution of said McCune trust deed. That at the date of said McCune trust deed the statute of 1845 was in force in the State of Illinois, and that by said statute there was no time limited within which the holder of a certificate of purchase must take out a deed.

And oratrix further shows that the law of the land as established by the decisions of the courts of last resort in the State of Illinois on the 13th day of August, 1868, was that the holder of a mortgage after condition broken was the real owner as against all the world, and that thereafter the mortgagor had only an equity of redemption

which was an equitable right, the creation of the courts of chancery, and that after a foreclosure or an effort to foreclose a mortgage by the mortgagee followed by possession of the premises the mortgagee's holding was considered adverse as to all the world and under the title derived by and through the mortgage the mortgagee held as under claim and color of title. That unless the mortgagor redeemed in accordance with the provisions of the decree or the statute that he lost his equity of redemption, and thereafter the mortgagee was the sole owner of both the legal title and the equity of redemption.

And oratrix respectfully shows that the laws of the land as established by legislative authority and the judicial decisions of the courts of last resort, as they exist at the date of a contract became a part of it, and cannot afterwards be changed so as to impair the obligation of that contract or materially infringe upon the legal remedies provided for its enforcement.

15 Your oratrix shows that the said statute of the State of Illinois, approved March 22, 1872, in force July 1, 1872, as the same has been construed by the decision of the supreme court of Illinois, as aforesaid, if the same are enforced against your oratrix, do or would impair the obligations of the contract of the said trust deed from the said Absalom McCune, to said Johnson as trustee for your oratrix, and has and will deprive your oratrix of her rights and remedies as they existed at the date of said contract contrary to the provisions of sec. 10, art. 1 of the Constitution of the United States of America, and contrary to section 14 of article 2 of the constitution of Illinois, and that there exists in this case a controversy necessarily involving the construction of the Constitution of the United States of America as applicable to the said statute of the State of Illinois, and the decisions of the supreme court of the State of Illinois.

And your oratrix further shows that the said statute of Illinois of 1872 as construed by the supreme court of Illinois, is not merely a limitation law, but is a law professing and attempting, as so construed, and as applied to this case, to deprive your oratrix of the vested right and title which she had on the 28th day of January 1881 (when the period of fifteen months after said master's sale had fully expired) and thence thereafterwards for five years after said 28th day of January, 1881, and to terminate and put an end to that right and title, and she submits and charges that the said act as so construed and applied by the supreme court of Illinois would deprive your oratrix of her said property without due process of law, contrary to sections 1 and 5 of article 14 of the Constitution of the United States, commonly known as the 14th amendment to said Constitution, and contrary to section 14 of article 2 of the constitution of Illinois, and in contravention of the law of the land; and that the matter in dispute exceeds *the* value, exclusive or interests and costs, the sum or value of two thousand dollars.

16 And oratrix further shows that after the order of reversal was entered in the supreme court of Illinois as above set forth, said cause came up for trial in the circuit court of Fulton county, which

court applying the said statute of 1872 as so construed by the said supreme court, and after the introduction of evidence showing substantially the facts hereinbefore set forth, directed the jury to find oratrix guilty and the defendant the owner of said lands in fee simple, and the jury was compelled so to find, and notwithstanding oratrix's motion for a new trial, judgment was entered in accordance therewith.

And oratrix respectfully submits that she has fully presented her defense at law, and that she is without remedy in this case, except in this court of equity. That it has been repeatedly decided by the Supreme Court of the United States, both in the several hearings of this case and in other cases, construing and applying the said statute of 1872 to deprive her of her said property and right, that she has no remedy in a court of law. Yet your oratrix maintains she is the equitable owner of the premises in controversy; that by his trust deed to E. G. Johnson, trustee, August 13th, 1868, Absalom McCune vested the legal title in said trustee and oratrix as the holder and owner of the notes described therein became the *cestui que trust*, and afterwards when the condition of the said trust deed was broken and oratrix reduced the property to possession she became the equitable owner; that she has protected her title by paying all taxes accruing thereon and by buying in the lands at the master's sale, and has maintained her possession, claim and ownership ever since, while the said McCune and his grantee, Prettyman, failed to redeem said lands according to the provisions of the decree of sale, made no claim to possession for more than twenty-years, and have witnessed the development and improvement of said property and its growth in value by the expenditures of large amounts of money
17 by your oratrix as aforesaid from a worthless swamp to a highly cultivated and valuable farm, without revealing their intention to claim ownership to both land and improvements. That in all the proceedings in the circuit court of Mason county by which oratrix sought to recover again the 520 acres of released land resulting in the foreclosure of the McCune mortgage, the sale of the land and its purchase by oratrix, she has done no act inconsistent with her equitable title, nor has she omitted at any time to assert her claim of ownership, nor has she suffered any decree or judgment of any court affecting her equitable title, yet by the laws of the State of Illinois as construed and enforced by its courts of last resort, after exhausting every effort and urging her defense three times before the supreme court of Illinois, the defendant is about to recover the possession of said lands and have his title thereto in fee simple established by a final judgment of a court of record, permanently clouding, if not wholly defeating oratrix' title thereto.

Oratrix further shows that the statutes of the State of Illinois provide that in all actions of ejectment the defeated party may have a new trial upon payment of the costs and making a motion therefor within one year after the date of the judgment. That in accordance with said statute oratrix paid the costs in the circuit court of Fulton county, and moved for a new trial within the

prescribed time and thereupon the judgment against oratrix in said court was set aside, and said cause stands for trial *denovo* at the present term of said court, which convened *to* the third Monday of this May, 1902, to-wit: May 19th, and is now in session. But oratrix will not be able at that trial to offer any other or different defense than that she has already presented, and under the decision of the supreme court of the State of Illinois, construing and applying the said act of 1872 to deprive her of her vested property and contract right, the result of such trial must necessarily be adverse to oratrix and result in a judgment from which
18 she could not obtain relief unless this court shall grant the relief herein prayed; and the defendant be enjoined from the further prosecution of said suit; and oratrix shows that said case in ejectment is liable to be called and tried forthwith and that your oratrix will be unduly prejudiced in her rights unless said temporary injunction as hereinafter prayed issue forthwith.

And your oratrix further shows that at the time she took possession of said lands in the summer of 1872 they were low, wet and swampy, and unfit for agricultural purposes, and used only for pasture and hay land during the driest part of the year. That such lands were valued at from $1.00 to $10.00 per acre, and these lands were not at that time worth to exceed $10.00 per acre. That said Benjamin S. Prettyman had become the owner of the equity of redemption by his deed from Absalom McCune prior to 1872. That he lived at Pekin within ten miles of said premises and was an intimate friend of Allison Breedlove, oratrix' tenant, and frequently visited at his house within two miles of said land and was acquainted with all that oratrix and her tenant were doing with reference to said property. That in conversation with said Breedlove he always spoke of the land as having been sold to oratrix and when reference was made to the price she had been compelled to pay for it he replied that she was able to redeem it from water and make it a good farm. That afterwards when John Coddington succeeded to the tenancy of the place he frequently met Mr. Prettyman at Pekin and in conversations in regard to the property he spoke of it as land he had once owned. That said Prettyman continued to live in Pekin until after the date of the conveyance to the defendant herein and during all that time was fully advised of what was being done with and upon said premises. And oratrix shows that after the said Coddington became tenant of said premises she commenced making improvements thereon in the way of fencing and draining, and between the
19 years Jan. 27, 1886, and July 15th, 1895, she built three dwelling houses, three large barns, three large corn cribs and other necessary farm buildings upon said premises at an expense of upwards of $5,000. That she also paid for drainage assessments upon said premises upwards of $5000. That she also paid for breaking the land which was a very expensive task on account of the strong growth of swamp grass and the peculiar nature of the ground, and for several years after the land was broken it was practically unproductive, being infested with wire worm, cut worm, and other pests. That the

soil was peculiar, being almost like peat, and highly inflammable, so that great pains had to be taken to avoid burning anything on the ground, and frequently fires would catch from unknown sources and have to be put out at great expense. That the soil was also deficient in some of the elements of normal farm land so that corn did not mature, and other crops could not be raised at all. That oratrix procured analysis of the soil, and applied various fertilizers to remedy its deficiencies; and about the time the said ejectment suits were commenced, she had overcome the difficulties and rendered the soil fertile and profitable. But oratrix shows that by reason of the said difficulties and expenses she had derived no income from said lands, but had spent large sums of money upon them. And further shows that as a result of her said efforts, the land was converted from a worthless swamp to good farm land worth in the open market $65.00 per acre. And oratrix charges that said Prettyman had full knowledge of all these facts, and yet at no time did he assert any claim of ownership to the property, or notify oratrix or her agents that he had any claim to the same, but stood by and allowed oratrix to spend said sums of money for the improvement and betterment of said premises. Wherefore oratrix shows that it would be highly inequitable and unjust to permit the defendant as the voluntary grantee of said Prettyman, without valuable consideration, to assert his title to said premises as against oratrix, and that he is equitably estopped from doing so; and in this respect oratrix has no remedy in a court of law, but can only secure relief by means of the equitable powers of this court.

In consideration whereof, and forasmuch as your oratrix is without remedy in the premises by the strict rule of law and can only have relief in a court of equity where such matters are properly cognizable, and to the end that said H. W. Lightcap, who is made a party defendant to this bill, may be required to make full, true and direct answer to the same, but not upon oath, his oath being specifically waived, and that said H. W. Lightcap be required by the decree of this honorable court to convey to your oratrix by sufficient deed, all his right, title, interest claim and demand in and to said lands; and that said H. W. Lightcap be permanently enjoined from asserting ownership of said lands, from entering thereupon or taking possession thereof, or dispossessing your oratrix thereof, or denying the title of your oratrix thereto; and alternatively that said H. W. Lightcap may be permanently enjoined from further prosecuting said action of ejectment in the circuit court of Fulton county aforesaid, or any other court, and that by the order and decree of this court, the deed of said Benjamin S. Prettyman to said H. W. Lightcap may be ordered to be given up and surrendered for cancellation, and your oratrix prays that said last mentioned deed be declared to be a cloud upon the title of your oratrix, and that your oratrix' rights in the premises as above set forth, may be declared, confirmed and established by the order and decree of this court and that your oratrix may by the order and decree of this

court be confirmed in her possession and occupancy of said premises against said H. W. Lightcap, and to the end that pending the hearing of this petition and until the matters and things herein alleged can be established and proved before this honorable court, a preliminary injunction may be issued against the defendant H. W. Lightcap, enjoining him from prosecuting the said action of ejectment in the Fulton county circuit court, or any other court,
21 until the final order and judgment of this court herein; and that your oratrix may have such other and further or different relief as to your honors shall seem meet, and to equity shall appertain.

May it please your honors to grant to your oratrix the writ of summons in chancery directed to the sheriff of said county of Cook, commanding him that he summon the defendant, said H. W. Lightcap, to appear before this court on the first day of the next September term thereof, to be held at the court house in Lewistown in the county of Fulton aforesaid, and then and there full, true, direct and perfect answer make (but not under oath) to all and singular the matters and things hereinbefore alleged and set forth, and to stand to abide by and perform such order, direction and decree as may be made against him in the premises, and as shall seem meet and agreeable to equity.

And your oratrix also prays that a writ of temporary injunction issue out of and under the seal of this court, as aforesaid, directed to said defendant, and enjoining and restraining the said defendant, his attorneys, representatives and agents, from prosecuting or further prosecuting the said action of ejectment in the circuit court of Fulton county, Illinois, until the further order of this court.

And your oratrix will ever pray, etc.

CHIPERFIELD & CHIPERFIELD,
W. W. HAMMOND,
Solicitors for Plaintiff.

22 EXHIBIT A.

Mason County Circuit Court, to the March Term, A. D. 1872.

LYDIA BRADLEY CLARKE *vs.* BENJAMIN S. PRETTYMAN, Thomas B. Breedlove, Absalom McCune.	In Chancery for Relief, and to Set Aside Conveyance, Reinstate Mortgage or Trust Deed, and for Foreclosure.

To the Honorable Charles Turner, judge of the twenty-first judicial circuit of the State of Illinois:

The complaint of your oratrix Lydia Bradley Clarke, of the city and county of Peoria and State of Illinois, respectfully represents and states that on or about the fifth day of May, A. D. 1867, her late hus-

band, Tobias S. Bradley, late of Peoria county aforesaid deceased, at said Peoria intestate leaving no last will and testament and leaving no children issues of her said marriage with the said Tobias S. Bradley or otherwise; and that after his decease she was duly appointed sole administratrix of the goods, chattels, property and estate which belonged to the said Bradley at his decease, and she is still acting in that capacity.

Your oratrix further states that as such administratrix she has fully paid and satisfied all claims and demands proven or outstanding against said estate and that more than four years have elapsed since she was appointed administratrix as aforesaid.

Your oratrix further states that she is informed and believes the law of the State of Illinois to be that she as the widow of the said Bradley deceased, was and is entitled to and is the lawful owner in her own right of all the personal estate of the said Tobias S. Bradley deceased remaining unexpended after the payment of debts as aforesaid and that afterwards to wit: after her said appointment as said administratrix as aforesaid, on or about the
23 thirty-first day of December A. D. 1869, she intermarried with one Edward E. Clark of the city of Memphis in the State of Tennessee and yet remains his wife, but that since her intermarriage she has continued to live and reside at the homestead in Peoria aforesaid, and that the said Clark has hitherto continued to live and reside in the city of Memphis aforesaid.

Your oratrix further states unto your honor that on or about the third day of *M*une A. D. 1867, one Thomas B. Breedlove, then residing in the county of Mason, in the State of Illinois, was indebted to your oratrix, then Lydia Bradley in the sum of nineteen thousand six hundred and sixteen dollars and twenty-five cents as specified and shown in five promissory notes of that date signed by the said Breedlove and payable to the order of said Lydia Bradley with interest from date at ten per cent. payable annually at the First National Bank of Peoria in the State of Illinois, each note for the sum of thirty-nine hundred and twenty-three and 45/100 dollars and payable in one, two, three, four and five years respectively, and the said Breedlove being then the owner in fee of the following described lands and real estate situated in the county of Mason aforesaid, viz: the northeast quarter of section twenty-two in township twenty-three north and range six west of the third principal meridian, also the east half of the southeast quarter of the same section (22); also the south half of section twenty-three in the same township and range aforesaid; also the east half of section twenty-six and the southwest quarter of the same section in the same township and range above named; also the northwest quarter of section twenty-six above named of great value to-wit, of more than the amount of said indebtedness described in said notes—in order to secure the payment of all said indebtedness according to the tenor and effect of the notes above described together with his wife Eliza Breedlove, made, exe-
24 cuted and delivered their deed of conveyance under their hands and seals and by them duly acknowledged, commonly called a

trust deed and being in equity and law a mortgage—of the lands above herein described to one Elbridge G. Johnson, conditioned among other things for the payment of said described notes, which said — being acknowledged by the said Breedlove and wife was also duly recorded in the recorder's office of said Mason county, a copy of which said deed is hereto attached marked "A" and made a part hereof, and your oratrix will ask leave on the trial of this cause to produce and offer in evidence a certified copy thereof together with a like copy of the certificates of acknowledgment and record if unable to find the original for that purpose and to produce the original if found.

And your oratrix further states unto your honor that afterwards and on or about the eighth day of October A. D. 1867, the said Thomas B. Breedlove and Eliza, his wife, by their other deed of that date under their hands and seals and by them duly acknowledged pretended to convey to one Benjamin S. Prettyman of the county of Tazewell and State of Illinois the said lands described as conveyed and mentioned in the trust deed to your oratrix aforesaid in said deed to said Prettyman described as follows, viz: the east half of the southeast quarter of section twenty-two, the south half of section twenty-three and all of section twenty-six, all in township twenty-three north of range six west of the third principal meridian containing twelve hundred acres, more or less, which conveyance was made subject to the trust deed or mortgage above described and said conveyance recites a pretended consideration of twenty-four thousand dollars which your oratrix is informed and believes included the payment of the said incumbrance to your oratrix by the said Prettyman at the time assuming or agreeing to pay off the said incumbrance to your oratrix above described. A certified copy
25 of said deed is hereto attached marked "B" and made a part hereof for the purpose of showing the contents thereof and your oratrix will ask leave on the trial of this cause to refer to and use in evidence for the purpose aforesaid the said certified copy if deemed material, the original not being in the possession or control of your oratrix.

And your oratrix further states and shows unto your honor that the said Benjamin S. Prettyman on the thirteenth day of August A. D. 1868, for purposes hereinafter mentioned made or pretended to make a sale and conveyance of part of said lands described in said Breedlove's deed to him for the pretended consideration or sum of twenty-four thousand dollars and to that end the said Prettyman and Sarah A., his wife, under their hands and seals, being dated on the day and year last above mentioned, executed a deed which was by them acknowledged to one Absalom McCune, thereby conveying to him the northeast quarter of section twenty-two, the north half of the east half of the southeast quarter of the said section twenty-two, the south half of section twenty-three, and the north half of the north half of section twenty-six, all in township twenty-three north of range six east of the third principal meridian part of lands above described as conveyed by said Breedlove to the said Pretty-

man and subject to the incumbrance or trust deed for the security of the debt to your oratrix aforesaid, a copy of which deed is hereto attached marked "G" and made part hereof for the purpose of stating and showing the contents of said conveyance and your oratrix will ask leave on the trial of this cause to refer to the said deed or a certified copy thereof if the original can not be obtained if deemed material by your orator and oratrix. And your orator and oratrix further state to your honor that the said deed purports to have been filed for record in the recorder's office of Mason county on the fifteenth day of August, A. D. 1868, at six of the clock p. m. and to have been recorded in said office,
26 and your orator and oratrix further show unto your honor that the said Absalom McCune on the same day and year aforesaid executed a mortgage, commonly called a sale mortgage, of the same premises so conveyed or pretended to be conveyed by said Prettyman to him to the said Prettyman conditioned for the payment to said Prettyman of the sum of eight thousand dollars specified in two notes of even date with the said mortgage payable to the order of the said Prettyman, one for the sum of three thousand dollars payable on the first day of June A. D. 1859 and the other of five thousand dollars payable on the thirteenth day of August A. D. 1872 with interest as specified in said notes, which mortgage deed purports to have been filed in the recorder's office of said Mason county on the fifteenth day of August A. D. 1868 at ten o'clock and forty minutes in the forenoon, a copy of which mortgage deed and certificate of record and acknowledgment *are* hereto attached marked "D" and made part hereof for the purpose of stating and showing the contents thereof, and your orator and oratrix will ask leave on the trial of this cause to refer to the original or a certified copy thereof if the original cannot be had if deemed material.

And your orator and oratrix further state and show unto your honor that on the same day of record, to-wit, on the thirteenth day of August A. D. 1868, the said Prettyman received from the said Absalom McCune another mortgage or trust deed that was drawn up or made by the said Prettyman, and is in his handwriting wherever not in printed characters and purports to be and was to E. G. Johnson aforesaid in trust and conditioned for the payment to your oratrix then Lydia Bradley of the sum of fifteen thousand dollars specified in three notes of five thousand dollars each of the same date aforesaid, payable to the order of Lydia Bradley, in one, two and three years after date at ten per cent. signed by said Absalom McCune, which deed was duly ac-
27 knowledged by said McCune and said deed was left by said Prettyman for record in the recorder's office of said Mason county on the said fifteenth day of August A. D. 1868, at ten o'clock and thirty-five minutes in the forenoon, a copy of which deed marked "D" and notes *are* hereto attached and made part of this bill for statement of contents, and your orator and oratrix will ask leave to

refer to the same and offer them in evidence on the trial of this cause.

Your oratrix further states and shows unto your honor that after the making and delivery of last mentioned deed to said Prettyman he the said Prettyman with purpose and intent to wrong, cheat and defraud your oratrix out of her security upon the twelve hundred acres of land contained and described in the mortgage or trust deed from said Breedlove to the said Johnson for the security of your oratrix and to obtain from your oratrix the notes of Breedlove mentioned in said trust deed of said Breedlove to the said Johnson, said notes being then unpaid and still in the hands of your oratrix and the sum thereupon due including interest thereon amounting to about twenty thousand dollars, and being well and abundantly secured upon twelve hundred acres of land, and fraudulently and craftily intending to obtain from your oratrix the said notes without payment of the same and thus release himself and the said Breedlove from his obligation and liability to pay the same and to release said twelve hundred acres of land or the best and most valuable part thereof from the burden of said security proposed to your oratrix and her agents to take and receive the said mortgage deed and notes of the said McCune for fifteen thousand dollars before described in lieu of the mortgage and notes of Breedlove upon the twelve hundred acres, and give up to him, the said Prettyman, the said Breedlove notes and release the said trust deed of said Breedlove to said Johnson, and that he, the said Prettyman would pay the balance then due upon said Breedlove's
28 notes, over and above the said fifteen thousand dollars and with intent to mislead, cheat, and defraud your oratrix in the premises, the said Prettyman fraudulently and untruthfully and falsely represented and stated to your oratrix and her agents particularly to one Washington Cockle who was then the business agent of your oratrix and had in his charge and custody the said mortgage security and notes of said Breedlove, that the six hundred and eighty acres of land contained in and described in the deed from said McCune to said Johnson before mentioned were the most valuable part of the said twelve hundred acres or as valuable as any part thereof contained in said Breedlove's mortgage or trust deed, or that said lands were in quality as good or better than the quality *as* the balance of said lands, that they were worth thirty thousand dollars and were good security and that they were valuable, improved and cultivated land, when in truth and fact the said lands described in said mortgage or trust deed of said McCune to said Johnson as trustee aforesaid were so selected by the said Prettyman from the twelve hundred acres as to include the poorest, least valuable and unimproved of said twelve hundred acres, leaving all the best, most valuable in quality and best located and best improved of the said twelve hundred acres contained in the Breedlove mortgage in the hands or possession of the said Prettyman, and the said lands so included in said McCune deed to said Johnson were wet, low, swampy, unimproved and com-

paratively valueless lands, subject to overflow and unfit for agricultural purposes and not worth more than one-third to one-half the said mortgage debt in said deed described, and all this well known to said Prettyman.

And your oratrix further states and charges that the said Prettyman at the time of making said proposition and representations was well acquainted with the location, position, quality and value and character of said lands as well as the whole of the said
29 twelve hundred acres, that he well knew said lands so contained in said McCune deed were wet, low swampy lands subject to overflow of water, unfir for agricultural purposes and not worth in the aggregate more than half the amount of the said sum of fifteen thousand dollars.

Your orator and oratrix further state and charge that neither your oratrix or her agents had ever been upon or seen said lands nor were they acquainted with their qual-ity, relative location, quality, value or condition, and this the said Prettyman well knew.

And your oratrix further states that she, your oratrix and her agent the said Cockle, not knowing the quality value, location, character or condition of said lands and relying in that respect solely upon the false, fraudulent, untruthful and fraudulent representations of the said Prettyman, and upon his further representation and statement at the time made that said McCune was a large stock farmer and was a man of property and good and responsible for the amount of said notes, and being deceived, misled, and deluded by the said wrong, false, fraudulent, untruthful representations of the said Prettyman about the value of said lands, and said Prettyman knowing it, were induced, persuaded to and did execute a release of the said Breedlove mortgage or trust deed aforesaid and did deliver up to said Prettyman the said Breedlove notes and did accept and receive the said McCune mortgage or trust deed and the notes therein described at their nominal or face value, to-wit of fifteen thousand dollars, the said Prettyman paying to the agent of your oratrix the balance of the said Breedlove notes, to-wit, about the sum of five thousand dollars, and upon the further and within guarantee of said Prettyman that there was no other incumbrance upon the lands described in said McCune trust deed or mortgage
30 previous to the incumbrance of said deed. And your orator and oratrix attach hereto and make part hereof for the purpose of stating its contents the said release of said Breedlove trust deed marked "E" and will ask leave to refer to the original and the certificate of acknowledgement thereon on the trial of this cause if the same can be found. And in default of being able to procure the same your orator and oratrix will ask leave to offer and refer to a certified copy of the same from the recorder's office of said Mason county.

And your oratrix further show- and charge- that the said McCune never took possession or occupied or assumed to possess, occupy or control said farm, that he was and is now a citizen of the State of Illinois, was not a man of plentiful means, was not a farmer or stock

farmer, and your oratrix believes the fact to be and so charges that the said McCune never in fact was or intended to become the lawful purchaser or owner of said premises so pretended to be sold and conveyed to him by the said Prettyman, that he was not possessed of sufficient or visible means from or of which said debt could be made or any part of it, and that he was in fact used by the said Prettyman as a stool pigeon, cat's paw or decoy duck or tool for the purpose of procuring the discharge aforesaid, and that after the discharge aforesaid and the delivery of the said Breedlove notes to said Prettyman, the said McCune on or about the thirtieth (30th) day of November A. D. 1868, together with his wife Rahoma McCune by their deed under their hands and seals of that date and duly acknowledged and recorded, conveyed the said premises to the said Prettyman, or reconveying the said premises or lands contained in the said mortgage or trust deed of said McCune hereinbefore described as delivered by said Prettyman to your oratrix, a copy of which deed is hereunto attached and made part hereof marked
"F" for statement of its contents, and your orator and oratrix
31 will ask leave to refer to and read a certified copy thereof
in evidence on the trial of this cause if the original be not produced by the said Prettyman on said trial.

Your orator and oratrix further state and show that the said McCune since said deed has been absent from this State and in parts unknown to your orator and oratrix, and that he, the said McCune did not pay and has not paid the taxes legally assessed upon the land so conveyed to him by said Prettyman and the same has not been paid by said Prettyman and your oratrix has been compelled to pay the same to save said lands from being lost and will be compelled to pay other and further and larger sums for the same purpose and that the pretended sale by said Prettyman to said McCune has been canceled and revoked by reconveyance by said parties and that the said twelve hundred acres of land contained and described in said trust deed of said Breedlove to the said Johnson for the security of the notes to your oratrix before described and the title thereof *is* now vested in the said Prettyman that he is the sole holder and owner thereof subject only to the said trust deed from the said McCune given for the security of the said fifteen thousand dollars mentioned therein, that altogether the said twelve hundred acres is worth much more than the said original debt of the said Breedlove to your oratrix and the interest thereon, and whatever sum the said Prettyman may have paid the said Breedlove for his conveyance aforesaid, if in fact the said Prettyman paid the said Breedlove any other consideration for said lands than the amount of the incumbrance and debt thereon due your oratrix as hereinbefore described, or if the said Prettyman in fact paid to said Breedlove the amount of the consideration stated in said deed from said Breedlove to him inclusive of the sum due your oratrix and secured on the lands described in said trust deed of said Breedlove.

Your oratrix further states and shows unto your honor that
32 they made repeated attempts to find said McCune and in default thereof and in default of payment by him of said indebtedness or the interest thereon described in said deed of said McCune to said Johnson to secure said notes due your oratrix as they fell due and in default of payment of *ta-es* upon said premises your oratrix caused said lands to be advertised to be sold according to the tenor and effect of power of said T. deed but before said sale being advised thereto your oratrix had the said lands visited and examined by the business agent of your oratrix which was the first time your oratrix or her agent or agents had ever been upon or seen said lands described in said McCune trust deed. When your oratrix found on such examination that the said lands were low, wet and swampy and of very little value, that such sale would not if made for the full value of said lands pay nearly the amount of the fifteen thousand dollars and the interest thereon together with the expenses of the sale and taxes unpaid upon said lands that it was not advisable to proceed to sell the same, no recourse being possible upon said McCune who could not be found and who had no known property or means from which the balance of said debt could be made and your oratrix further show- and charge- that the parcels of land so included in said mortgage or trust deed of said McCune to said Johnson had been so craftily and cunningly selected by said Prettyman from the said twelve hundred acres described in the said deed of said Breedlove to said Johnson for your oratrix before described that they include all the poor, wet, swampy and inferior and worthless land of said twelve hundred acres and left retained by the said Prettyman all or nearly all that part of said twelve hundred acres which is really valuable for agricultural or farming purposes. And it then first became known unto your oratrix and her agents that your oratrix had been misled, cheated and defrauded in the premises and cheated
33 and defrauded out of her just dues and securities by the fraudulent acts of said Prettyman, your oratrix therefore further states and charges that the said release of the said Breedlove mortgage was obtained by the said Prettyman by false, fraudulent, corrupt and dishonest statements, pretensions and representations as to the value and quality and security of the said lands included in said McCune trust deed, and as to the condition, responsibility and pecuniary ability of the said McCune made by the said Prettyman to your oratrix and her agents that the said release was so obtained and the notes of said Breedlove promised to be given up to said Prettyman by said Prettyman solely for his advantage and benefit, and that he knowingly and intentionally misled and cheated your oratrix and her agents in the premises, that the debt of said Breedlove was well secured, that large arrears of interest have fallen due on the same and several of the notes described in the said Breedlove deed are also unpaid and taxes unpaid upon the premises described in said deed, and that your oratrix has the right to have the whole balance of the debt now paid whether due or not due according to the original terms of the con-

tract, and that the said release and discharge was, is and ought to be deemed and held null and void and of no effect and ought to be so decided and declared and cancelled and annulled; that the said Prettyman ought to be ordered and compelled to return and restore to your oratrix the mortgage lien she had and held upon the twelve hundred acres of land described in said Breedlove deed to said Johnson for your oratrix and to the other notes in said deed described, subject however to the deductions of the amount paid by the said Prettyman upon the said indebtedness of said Breedlove and that your oratrix ought in equity and good conscience to have a decree that the said release be cancelled, annulled and treated as never made, that the said Prettyman restore to your oratrix the
34 said notes of said Breedlove so delivered to the said Prettyman, that the said mortgage or trust deed be declared in force and a valid lien upon the premises therein described until the *dull* amount thereof due of principal and interest shall be paid by the said Prettyman, that for the non-payment of interest and principal and taxes as provided in said trust deed the whole balance of said debt *to* be declared to be due for the foreclosure of the said Breedlove mortgage or trust deed and for the sale of the said twelve hundred acres of land therein described or so much thereof as will be sufficient to pay the balance of the said Breedlove debt and interest thereon unless the said sum shall together with all cost be paid by the said Prettyman together with all the cost of this proceeding and all disbursements made by your oratrix for taxes upon said premises described in said McCune deed or which may hereafter be paid by your oratrix to save the said premises or any of them *prior* sale for taxes either past or in future until the said debt shall be paid in full, and that upon such payment being fully made either by sale or by payment by said Prettyman, your oratrix be ordered to deliver up *deliver up* or cancel, the said mortgage or trust deed of the said McCune or the notes there described. And your orator and oratrix

And hoped that said Prettyman having now the possession of the whole of said premises would *of* paid or would have offered to or paid said debt in full and thus restored your oratrix to her rights in the premises, but the said defendant Prettyman has ever neglected and refused so to do, but gives out in speeches and pretends that he is not liable or responsible to your oratrix and that she must follow the said McCune and that she your oratrix has no recourse upon him.

And your orator and oratrix being without remedy at law
35 in the premises therefore prays that the said Benjamin S. Prettyman, Thomas B. Breedlove and Absalom McCune be made parties defendant to this suit, and that they be summoned to appear and answer to the foregoing bill and all the matters and things, charged and allegations therein mentioned as fully and positively as if therein specially interrogated, but not upon their respective oaths, their oaths being waived to such answer that upon a final hearing hereof an account may be taken of the amount due

upon the said Breedlove debt herein described, including interest thereon and deducting the amount paid upon the same by the said Prettyman, also of all taxes paid or hereafter to be paid by your orator and oratrix up to the date of said — and that the said release be declared null and void and cancelled, that the said Prettyman be ordered to produce at said trial the said notes of the said Breedlove or account for their loss, that the contents thereof be proven; and that the said Prettyman be ordered to produce on said trial the original trust deed of said Breedlove herein described and the original lease herein mentioned and the original deeds herein described from said Prettyman and wife to said McCune; and from said McCune and wife to said Prettyman, and that said mortgage or trust deed of said Breedlove to said Johnson for your oratrix herein described be declared and decreed a first lien and mortgage lien upon the said twelve (12) hundred acres of land therein described for the security of principal and interest thereupon due and for the taxes paid by your oratrix for the lands or any part of them in said deed described and that the whole be declared due and payable according to the tenor and effect of said deed, and that the usual decree be made for the sale of said mortgaged premises and for the payment of the amount for principal and interest and taxes aforesaid and costs of this suit by some short day to be fixed by said court, and in default thereof that said premises or so much thereof as may
36 be necessary for the purposes aforesaid be sold by the master in chancery of this court according to the practice of courts of equity in such cases; and that the said defendants and each of them and that all persons claiming under them or either of them subsequent to the commencement of this suit and all other persons not parties to this suit who have any liens by judgment or decree upon the mortgaged premises subsequent to the said trust deed of the said Breedlove or any liens or claims thereon by or under any such subsequent decree or judgment, either purchasers, incumbrances, or otherwise may be barred and foreclosed of all equity of redemption in said premises, and that your orator and oratrix may have such other and further relief as the nature of the case may require and as to this court shall seem agreeable to equity and good conscience *as* your complainant as in duty bound will ever pray.

LYDIA BRADLEY CLARKE,
By E. G. JOHNSON, *Her Solicitor.*

E. G. JOHNSON,
Solicitor for Complainants.

37 STATE OF ILLINOIS, } ss:
County of Mason, }

Of the March Term, 1872, of the Circuit Court of said County.

LYDIA BRADLEY
vs.
BENJAMIN S. PRETTYMAN, THOMAS B. Breedlove, & Absalom McCune. } In Chancery to Foreclose.

The Separate Answer of the said Benjamin S. Prettyman, One of the Above Named Defendants.

Saving and reserving &c., for answer to said bill of complaint in said cause above named filed & to so much thereof as he is informed that it is necessary & proper for him to make answer unto severally answering says—He admits that said Tobias S. Bradley died as alleged without children and that said complainant was appointed administratrix as alleged in said bill, but respondent knows nothing of the payment of the debts of the estate of Bradley, and therefore denies the same is true & respondent admits that by law said complainant is entitled to the personal estate of said Tobias S. Bradley. Respondent admits the marriage of complainant as alleged, but known not of the residence alleged, & therefore denies the same and calls for proof. This respondent admits that said Thomas B. Breedlove on the 3rd day of June, 1867, was indebted to said Lydia Bradley $19616.25/100 dollars as shown in said alleged notes of that date payable to Lydia Bradley with interest at 10 per cent. & payable as alleged. And this respondent admits that said Breedlove owned & executed the trust deed or mortgage on the lands in said bill alleged to secure the payment of said notes and sum of $19616.25.

And the respondent admits that said Breedlove & wife on the 8th day of October 1867, sold and conveyed the said lands in said mortgage and bill described to this respondent and that said deed was made to this respondent subject to said mortgage to said Johnson,
and this respondent avers that said consideration *was*
38 $24000.00 named in said deed was not pretended but real,
and this respondent denies that he ever agreed to pay off said incumbrance to complainant or otherwise.

This respondent admits that on the 13th day of August 1868, he sold and conveyed the part of said lands alleged in said bill & described in his deed to Absalom McCune to said Absalom McCune for the sum alleged & that the same was acknowledged and recorded as alleged in said bill, but he denies it was for the purpose or with the intention in said bill alleged, or made subject to any incumbrance or trust deed to, or any debt to complainant, and this respondent admits that said Absalom McCune on the 13th day of August, 1868, executed to this respondent for said sum of $8000.00

dollars, a sale mortgage on said land named in said deed to him & that said mortgage was filed for record as alleged, & respondent admits that on the 13th day of August 1868, said McCune executed his trust deed or sale mortgage to said E. G. Johnson to secure the sum of $15000.00 *dollars* to said complainant Lydia Bradley in notes described in said bill, and respondent admits that the same — acknowledged and was received at the time alleged.

But this respondent denies that he, after the making of said deed or mortgage named or at any time with any intent to cheat or defraud complainant out of any security or otherwise or to obtain the notes of the said Breedlove unfairly or unlawfully or fraudulently or craftily or otherwise improperly from said complainant or otherwise or to improperly or wrongfully to release said Breedlove or this respondent from any agreement or obligation whatever or wrongfully release all or any part of said land from said mortgage of said Breedlove proposed to complainant or her agents to take the notes of McCune for $15000.00 in lieu of the said notes & mortgage of said Breedlove & get said release deed named, although this re-
39 spondent avers that he did before the making of said mortgage from said McCune to said Johnson for $15000.00 *dollars* named call on the agents of complainants Washington Cockle & the said trustee E. G. Johnson to inquire whether they or complainant would accept the notes and mortgage of said McCune on 600 acres of the land in the Breedlove trust deed or mortgage to said Johnson named in lieu of so much of the debt of said Breedlove to said complainant inasmuch as the same was to become due faster & earlier than the Breedlove debt, said notes of McCune becoming due in one, two & three years from August 13th, 1868, and the said Breedlove debt not being due until 1, 2, 3, 4, & 5 years from June 30, 1867, and this respondent was then informed by said Johnson that the whole matter was left by complainant with said Cockle by him to be determined for her as he thought best under the circumstances and this respondent avers that he then called on said Cockle, who informed this respondent, that if this respondent *was* pay him for said complainant the residue of the debt of Thomas B. Breedlove to complainant over and above said $15000.00 *dollars*, he would take the said notes and mortgage of said McCune on said 600 acres of said land in lieu of that sum of $15000.00 *dollars* of the Breedlove debt & have the mortgage or trust deed on all of the 1200 acre tract released and satisfied & this respondent avers that he then agreed to & with the said Cockle for and on behalf of complainant to pay in cash the residue of the Breedlove debt and have the said McCune execute his note and mortgage to said complainant or for her use on said 600 acres of land & then & there paid to said Cockle in cash the residue of said T. B. Breedlove debt over said $15000.00 *dollars* and by his, said Cockle's, direction took the notes and mortgages of McCune to the office of said E. G. Johnson who then and there in the presence of this respondent carefully examined the
40 same and the receipt from said Cockle for the residue of said debt of Breedlove, paid in cash by this respondent. (being as

this respondent now recollects over $7000.00 *dollars* in cash), and he, the said Johnson then remarked that he, Johnson would not have agreed to exchange said security & satisfy said trust deed of Breedlove, but as complainant & Cockle had chosen to do so, he would, as directed by them, receive the notes and mortgage of McCune for complainant & release the Breedlove deed of trust on all of the lands therein, conditioned that this respondent would guarantee *that* the title to said 600 acres in the mortgage of McCune to be free from any prior liens or incumbrances thereon & respondent avers that he then and there so guaranteed the same and delivered said notes and mortgage of said McCune to said Johnson for complainant & at the request of the said Johnson & for complainant caused the said mortgage of McCune to said Johnson for said 600 acres of land to be filed for record at the time in said bill alleged & he avers that there was then no prior or other lien on said land so mortgaged by said McCune & this respondent avers that the said Johnson notwithstanding said guarantee aforesaid would not & did not then execute said release, but said he would have said complainant herself to sign the same with him, as she was a woman & with all very careful & particular & personally looked over all her own business. And respondent avers that said release named in said bill was *of was* afterwards & to-wit and long after the date of said release in said bill named sent & delivered to your respondent signed & acknowledged as set forth in said bill and long after the said complainant & all of her agents had had full opportunity to examine said land, inquire into the character & standing of said McCune & in fact long after they had to some extent inquired of & become satisfied as to both and this respondent denies all intent or purpose to mislead, cheat, wrong, or defraud complainant or any other person in said transaction and this respondent denies all fraudulent, un-
41 truthful and false statements imputed to him in said bill and respondent denies that he represented *that* said 600 acres of land to be the most valuable part thereof, but thinks now it is of equal value with the residue thereof, and respondent denies that he informed any person that the same was cultivated land, although he avers that in fact part of the same was then & now is in cultivation & much more might then have been cultivated & all of the rest might now be put in cultivation & respondent denies that said 600 acres so mortgaged by McCune was the poorest and least valuable of the 1200 acres & respondent denies that said land mortgaged by McCune *were* subject to overflow or unfit for agricultural purposes or not worth more than ⅓ to ½ of said mortgage debt named or that — of it was ever wet or low or swampy or was so known by Prettyman & this respondent denies any further or other knowledge of the land or any part of it then was presumed to be & might have been known to said complainant & her agents & which the said Cockle averred that he did know the quantity & value of the same when respondent paid him the cash above named.

And respondent denies that complainant relied on anything he said in arranging said Breedlove debt but required written

guarantee from him for every thing doubtful & delayed the execution of every paper until time could be had to inform herself or for some similar purpose, this respondent denies that he represented said McCune to be a large stock farmer, but avers that he said that McCune claimed that he was buying the tract for a stock farm & that he represented that he then had a drove of Texas cattle coming from the south-west & which he expected to drive to & herd the same upon said land & had the appearance of being a fair business man; but he denies that he deceived, misled or deluded said complainant or her agents or that he was or is capable of doing so & avers that said Cockle is & was then the president or some important officer in the First National Bank of Peoria & said
42 Johnson is one of the most able lawyers in Illinois & said complainant has the reputation of being the most capable & efficient woman of business in the State of Illinois, and he positively denies that he ever persuaded or otherwise than in a just & fair business manner induced any of them to sign the release or consent that it should be done.

Respondent admits that he took up the Breedlove notes, but avers he paid for them before they became due as aforesaid & that — alon*g* induced complainant & her agents to take the money & the McCune notes & mortgage & give him the others. Respondent also admits that complainant accepted said McCune notes & mortgage & avers it was with full knowledge & when she had held them from the 13th to the 28th of August to examine, enquire & determine upon & about. Respondent denies that said McCune ever occupied or assumed to possess or occupy or control said farm, avers that he did employ persons to fence, break, erect a dwelling, cut hay & drain thereon for him & until his arrival with his cattle & procured tools, lumber & provisions for the persons aforesaid, that he does not know whether said McCune was a citizen of Illinois or not & never averred that he knew, & as to his means, this respondent had no other knowledge than his appearance & representations & that of those who introduced him & recommended him to respondent as a person wishing to purchase said farm, & those persons were persons known to respondent to be men of good character and means & who had shown said land to said McCune before he came to purchase the same of respondent and this respondent don't personally know said McCune was a farmer or a stock farmer, & denies he ever represented he did, but he avers that said McCune was represented to him as a stock farmer, feeder and dealer, & so represented himself to be & had the appearance of being such a person; respondent don't know the intentions of McCune, but avers he represented to this respondent that he intended improving said
43 land thoroughly and did buy material to do it, as this respondent knows & respondent knows the sale was not pretended but in good faith on his part and for all he knows on the part of the said McCune that those pretending to know represented to him that he, McCune, was the owner of 600 head of cattle then coming across the

States of Kansas & Missouri to said farm. Respondent denies any use of said McCune improperly as alleged or otherwise.

This respondent admits that about the 30th day of Nov., 1868, said McCune sold and conveyed said land to this respondent and this respondent avers that the following are the causes and circumstances under which said sale to him from McCune was made, the same McCune after making the proposition to improve said land aforesaid left as respondent was informed by him & others to hurry on his drove of cattle & on or about the last of September or in October of 1868, said McCune returned to Pekin & informed this respondent that he could not get his drove of cattle through the State of Missouri on account of the hostility of the inhabitants or the passage of some laws forbidding Texas cattle going through the State & therefore he was compelled to turn back said drove & could not get them through to Illinois that fall, but would get his farm ready & his business arranged for such business another year, & the agitation of the cattle fever or Texas fever question reaching Illinois owners of lands, said McCune became disheartened in his business & offered to sell his farm which he deemed very valuable to this respondent & to others; and respondent after the sale of said farm to said McCune having been offered a large sum, viz. $3000.00 *doll's* over what said McCune had paid him, he, respondent, enquired carefully of the standing & ability to pay of the party offering the same to him & was informed that he was a farmer residing in Peoria county, Illinois, responsible for his offer &
44 said McCune having again offered his farm to this respondent for the notes from him to this respondent & $1000.00 *dollars* advance on said original sale to him, respondent avers he agreed then & there to take the said farm & said McCune procured his wife to execute with himself the deed to respondent for said 600 acres of land in the bill named & respondent gave his note at twelve months' time to said McCune for $1000.00 & 10 per cent. interest and respondent avers that afterwards said McCune assigned said note to complainant to whom this respondent afterwards paid all of the same then due with the interest amounting to $1000.00 & over, having before paid $200.00 *dollars* on said note to one Allison Breedlove.

This respondent avers that he is the sole owner & holder of said 1200 acres of land subject to the mortgage *to* McCune to complainant, but respondent admits said 1200 acres is worth much more than the original debt of Breedlove & avers he paid said Breedlove in purchasing the same of him *b*ear $4000.00 *dollars* above any lien of said mortgage of Breedlove to complainant & thought he made a very reasonable purchase.

Respondent denies that said land in said mortgage from McCune to Johnson for complainant includes all the poor, wet, swampy & inferior & worthless land & complainant and her counsel either don't know what the facts are *of* which they have stated in their bill or if they do know, they have willfully misstated them in making those allegations, and respondent denies that said release was ob-

tained by false, fraudulent, corrupt or dishonest statements, pretenses or misrepresentations as to value, quality or security although he avers that 600 acres was only intended to be mortgaged and he avers he represented it to be 600 acres only & the fact was by mistake one 80 acre tract got in said mortgage & was not discovered until afterwards, & it now appears to be 680 acres & 600 acres alone was
45 ever agreed to be given as security & the other 80 the complainant has no equitable right to a mortgage upon whatever & one of the reasons for taking the purchase back from McCune was the discovery by respondent that he had — by mistake and accident in drawing up the papers 680 acres into said deed to McCune when he had in fact sold him but 600, but the 80 acres being included in said mortgage of McCune for complainant is no cause of complaint to complainant & respondent denies all knowledge of wrong or intent to mistreat, defraud or cheat with which he is charged.

And this respondent insists upon the force and effect of the statute of frauds and perjuries as to all of the alleged parol statements & pretenses alleged, concerning said sales or deeds, release- & mortgages of said land alleged.

And this respondent here now again protesting denies every allegation in said bill not hereinbefore admitted; and, now, having fully answered as to all and singular the allegations of said bill of complaint asks to be hence dismissed with his reasonable costs in this behalf expended.

B. S. PRETTYMAN.

46 EXHIBIT B.

(Copy.)

STATE OF ILLINOIS, } ss:
Mason County, }

Circuit Court, August Term, A. D. 1879.

LYDIA BRADLEY *vs.* BENJAMIN S. PRETTYMAN, SARAH A. Prettyman, Ansel Haines, Nancy J. Haines, Absolom McCune, Thomas B. Breedlove, Eliza Breedlove.	In Chancery. For Foreclosure & Relief.

And now on this day comes the complainant, Lydia Bradley, by Johnson and Foster and Dearborn and Campbell, her solicitors, and it appearing to the court herein from the writ- issued herein to the sheriffs of the counties of Mason and Tazewell and the returns thereon that the defendants, Benjamin S. Prettyman, Sarah A. Prettyman, Ansel Haines and Nancy J. Haines had been duly served with process herein at least ten days prior to the first day of the present term of this court and had each appeared and filed their answers in this court to complainant's bill of complaint.

And it further appearing to the court that at the time of the commencement of this suit, from the affidavit of E. G. Johnson, one of the solicitors of the complainant, that the said Absolom McCune was not a resident of this State and that the said complainant under the direction of this court duly published a notice as the law requires in case of non-residents in the Democratic Clarion, a weekly newspaper published in Havana in said Mason county, notifying the said McCune of the pendency of this suit for the time and in the manner provided by law.

And it further appearing to the court that the said defendants Thomas B. Breedlove and Eliza Breedlove had been duly
47 served with process herein for more than ten days prior to the first day of the August term 1879 of this court and the said defendants Absolom McCune, Thomas B. Breedlove and Eliza Breedlove, having been severally three times solemnly called in open court to plead, answer or demur to the complainant's bill of complaint, came not, but herein made default;

It is therefore ordered, adjudged and decreed that the same be taken for confessed against the said defendants, Absolom McCune, Thomas B. Breedlove and Eliza Breedlove.

And the court having ordered this cause to be referred to the master in chancery of this court to take proofs, & also by agreement of the solicitors of the complainants and defendants and that Frank Ives, a notary public, should take and report certain other proofs now on file in this cause, and that Watson, a short hand reporter, should take and report the testimony of Allison Breedlove, Thomas Breedlove, Marshall Landers, Pardon Case and Wright Wyatt, now on file in this case, and the said master in chancery of this court, as well as the said Watson and the said Ives, having reported the same, and the said cause coming on for hearing upon the original and amended bills of complaint and the answers and amended answers of the defendants Benjamin S. Prettyman, Sarah A. Prettyman, Ansel Haines, Nancy J. Haines and the replication of the complainant and default of the other defendants, and, the court being fully advised in the premises, doth find:

That the court has jurisdiction of the subject matter and the parties in this cause, and that there is now due from the defendant Absolom McCune, to the complainant, Lydia Bradley, the sum of thirty one thousand and five hundred dollars for principal and interest on the three certain promissory notes mentioned in complainant's bill,
each for the sum of five thousand dollars and due and pay-
48 able in one, two and three years from date with interest at ten per cent. per annum from the thirteenth day of August A. D. 1868, and secured by a deed of trust to one E. G. Johnson of the same date on the following described lands in said trust deed mentioned, to-wit:

The north east quarter; and the north east quarter of the south east quarter of section twenty-two (22), the south half of section twenty-three (23) and the north half of the north half of section

twenty-six (26), all in township twenty-three (23) north, of range six (6) west of the 3rd principal meridian in said Mason county.

It is further ordered, adjudged and decreed by the court that the title to the said lands, so far as the said McCune mortgage is concerned is in fee in the said Absolom McCune, free and clear of any claim in law or equity of the said Benjamin S. Prettyman, Sarah A. Prettyman, Ansel Haines, Nancy J. Haines, Thomas B. Breedlove and Eliza Breedlove and subject to the payment of the said amount due from the said McCune to the said complainant.

And it further appearing to the court that the amount now due from the said Absolom McCune to the said complainant was for the purchase money of the aforesaid lands;

It is therefore ordered, adjudged and decreed that the purchaser under the said sale (unless the amount shall be paid without sale) take the said lands free and clear of all right of dower of the wife of the said Absolom McCune or the wives of either of the said defendants.

It is further ordered, adjudged and decreed by the court, that the defendant pay to the complainant, within thirty days from this date the said sum of thirty-one thousand five hundred dollars, with lawful interest to be computed thereon, from this date until
49 paid, and also the costs of this suit, to be taxed by the clerk of this court.

And it is further ordered, adjudged and decreed that in default of said payment being made as aforesaid, by the defendant, then, and in that case, the said mortgaged premises mentioned in the bill of complaint in this cause, to-wit:

The north east quarter, and the north east quarter of the south east quarter of section twenty-two (22), the south half of section twenty-three (23) and the north half of section twenty-six (26); all in township twenty-three (23) north of range six (6) west of the 3rd principal meridian in said Mason county, or so much thereof as may be sufficient to realize the amount so found due the complainant, principal and interest and also the costs of this suit, including the fees, disbursements and commissions on the sale herein mentioned, and which may be sold separately without material injury to the parties interested, be sold at public vendue for cash in hand to the highest and best bidder, at the front door of the court house in the said county of Mason, that the master in chancery of this court execute this decree; and that he give public notice of the time and place of said sale by previously publishing the same for the space of thirty days in a newspaper published in said county; and that the complainant, or any one of the parties in this cause, may become the purchaser or purchasers; that the said master, on such sale being made execute a certificate of purchase to each purchaser or purchasers thereof, or any portion thereof; which certificate shall specify the lands or tenements purchased by such purchaser or purchasers, and the sum paid therefor, or, if purchased by the complainant in said bill, the amount of his bid, and the time when the purchaser will be entitled to a deed for

such lands or tenements, unless the same shall be redeemed according to law, and the said master shall also file, in the office
50 of the recorder of said county, a duplicate of such certificate or certificates signed by him.

And the said master out of the proceeds of such sale, shall retain his fees, disbursements and commissions on said sale; that he pay the officers of this court their costs in this suit; and that out of the remainder of said proceeds he pay to the complainant the said sum of thirty-one thousand five hundred dollars, together with legal interest thereon, from the date of this decree, to the day of sale; or, if such remainder shall be insufficient to pay the whole of said amount and interest, as aforesaid then that he apply said remainder to the extent to which it may reach in satisfaction of said amount and interest; and that the said master take receipts from the respective parties to whom he may have made payments as aforesaid, and file the same, together with his report of sale, in this court. And that, in case the said premises shall sell for more than sufficient to pay the principal, interest and costs in this suit, then that the said master, after making payment as aforesaid bring such surplus moneys into court without delay to abide the further order thereof.

And it is further ordered, adjudged and decreed that the defendants and all persons claiming by, through or under them since the commencement of this suit, be forever barred and foreclosed from all equity of redemption, and claim of, in and to said mortgaged premises or any part thereof, and if the same are not redeemed, according to law, by the defendants, their heirs, executors, administrators or grantees, within twelve months next after the day of such sale, and by all judgment creditors, and their representatives and assigns within fifteen months next after the day of said sale; and that at the expiration of said fifteen months next after the day of said sale, if said mortgaged premises, or any portion thereof, are not redeemed as aforesaid, then, in that case
51 upon the production to the then acting master in chancery, and filing in his office of the certificate of purchase executed by the master in chancery as aforesaid, to the purchaser or purchasers of said mortgaged premises, or any portion thereof, by such purchaser or purchasers his or their representatives or assigns, said master shall make, execute and deliver to such purchaser or purchasers, or to his or their representatives or assigns, good and sufficient conveyance or conveyances, in fee simple of said premises, or such portion thereof as shall have been sold to such purchaser or purchasers respectively.

And it is further ordered, adjudged and decreed, that upon the execution and delivery of the conveyance or conveyances as aforesaid, the said purchaser or purchasers, his or their representatives or assigns, be let into the possession of the portion of said mortgaged premises so conveyed to him or them; and that any of the parties in this cause, who may be in possession of said premises, or any part thereof, and any person who, since the commencement of

this suit, has come into possession, under them or either of them, on the production of the master's deed of conveyance, and a certified copy of the order of this court, confirming the report of said sale, shall surrender possession thereof to such purchaser or purchasers, their representatives or assigns, and on refusal so to do, will be considered in contempt of this court.

And it is further ordered, adjudged and decreed, that if the moneys arising from said sale shall be insufficient to pay the amount so due the complainant, with interest as aforesaid, after deducting the costs and expenses of sale as aforesaid, that said master specify the amount of such deficiency in his report of said sale, and that on the coming in and confirmation of said report, the defendant, Absolom McCune, who is personally liable for the pay-
52 ment of the debt secured by said mortgage remain liable to pay to the complainant the amount of the balance remaining due on said mortgage.

LYMAN LACEY, *Judge.*

Filed Aug. 22nd, 1879.
LEONARD SCHWENK, *Clerk.*

STATE OF ILLINOIS, } ss.:
Peoria County, }

Lydia Bradley on oath states that she is the complainant named in the foregoing bill and has heard the same read and knows the contents thereof, that the matters and things in said bill contained are true of her own knowledge except as to those matters which are therein stated to be on her information and belief and as to those matters she verily believes them to be true.

LYDIA BRADLEY.

Subscribed and sworn to before me this 26th day of May, A. D. 1902.

CLARA E. COMSTOCK,
[SEAL.] *Notary Public.*

(Filed May 29–1902.

J. C. SEVERNS,
Circuit Clerk.)

And be it remembered that afterwards, to-wit: on May 26, 1902, the same being one of the regular days of said term of said court, the following among other proceedings were had and entered of record in said court, that is to say:

53 "LYDIA A. BRADLEY } Injunction. # 15471.
vs.
H. W. LIGHTCAP. }

On this day comes the said complainant by her solicitors, Chiperfield & Chiperfield and Hammond, and moves the court to grant

unto her an injunction in this cause, and the court doth set the hearing on the motion for the first day of the next term of this court."

And be it remembered that afterwards, to-wit: on June 19, 1902, the same being one of the regular day- of said term of said court, the following among other proceedings were had and entered of record in said court, that is to say:

"Ordered by the court that all causes, motions and other matters not otherwise disposed of pertaining to this court, be and the same are continued until the next term of this court, and that court do now adjourne so to stand until the next regular term thereof, in course."

54 UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
County of Fulton, }

Pleas before the Honorable John A. Gray, one of the three judges of the ninth judicial circuit of the State of Illinois, and presiding judge of the circuit court of Fulton county, in the State aforesaid, at a term thereof begun and held at the court house in the city of Lewistown, in said county and State, on the twenty-second (the same being the fourth Monday) of September, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh.

Present: Honorable John A. Gray judge. E. W. Keefer, master in chancery. J. C. Severns, clerk. L. C. Fouts, sheriff.
Attest: J. C. SEVERNS, *Clerk.*

Court opened by proclamation.

And be it remembered that heretofore, to-wit: on September 16, A. D. 1902, there was filed with the clerk of this court, in the case of Bradley *vs.* Lightcap then pending in said court, the following notices, with receipts thereon, and the entry of the appearance of the said defendent, in the words and figures, to-wit:

"STATE OF ILLINOIS, } ss:
County of Fulton, }

In the Circuit Court, September Term, A. D. 1902.

LYDIA BRADLEY }
vs. } Bill for Injunction.
H. W. LIGHTCAP. }

To H. W. Lightcap, Wallace & Lacey, H. W. Masters, and George B. Foster.

GENTLEMEN: You will please take notice that at ten o'clock upon the 22nd day of September, A. D. 1902,—or so soon thereafter as counsel may be heard,—the complainant in the above entitled proceeding will appear in the circuit court of Fulton county, and make an application to the presiding judge thereof, that a temporary writ of injunction issue herein, as prayed in said bill of complaint; at which time and place you may appear and resist the same if you see fit so to do.

W. W. HAMMOND,
CHIPERFIELD & CHIPERFIELD,
Solicitors for Complainant."

(Filed Sep.-16-1902.

J. C. SEVERNS,
Circuit Clerk.)

"STATE OF ILLINOIS, } ss:
County of Fulton, }

In the Circuit Court, September Term, A. D. 1902.

LYDIA BRADLEY }
vs } Bill for Injunction.
H. W. LIGHTCAP. }

To H. W. Lightcap, Wallace & Lacey, H. W. Masters, and George B. Foster.

GENTLEMEN: You will please take notice that at ten o'clock upon the 22nd day of September, A. D. 1902,—or so soon thereafter as counsel may be heard, the complainant in the above-entitled proceeding will appear in the circuit court of Fulton county, and make an application to the presiding judge thereof, that a temporary writ of injunction issue herein, as prayed in said bill of complaint; at
which time and place you may appear and resist the same
56 if you see fit so to do.

W. W. HAMMOND,
CHIPERFIELD & CHIPERFIELD,
Solicitors for Complainant.

Rec'd a true copy of the above notice this 9th day of Sept. 1902.
H. W. MASTERS,
GEO. B. FOSTER, AND
WALLACE & LACEY,
Solicitors for Respondent."

(Filed Sep.–16–1902.

J. C. SEVERNS,
Circuit Clerk.)

"STATE OF ILLINOIS, } ss:
County of Fulton, }

In the Circuit Court, September Term, A. D. 1902.

LYDIA A. BRADLEY }
vs. } Bill for Injunction.
H. W. LIGHTCAP. }

To H. W. Lightcap, Wallace & Lacey, H. W. Masters, and George B. Foster.

GENTLEMEN: You will please take notice that at ten o'clock upon the 22nd day of September, A. D. 1902,—or so soon thereafter as counsel may be heard,—the complainant in the above entitled proceeding will appear in the circuit court of Fulton county, and make application to the presiding judge thereof, that a temporary writ of injunction issue herein, as prayed in said bill of complaint; at which time and place you may appear and resist the same if you see fit so to do.

W. W. HAMMOND,
CHIPERFIELD & CHIPERFIELD,
Solicitors for Complainant.

Received, Peoria Illinois, September 9th, 1902 of Messrs. Chiperfield & Chiperfield, notice of which the above is a copy.
GEORGE B. FOSTER,
Of Counsel for said Resp'd't."

(Filed Sep.–16–1902.

J. C. SEVERNS,
Circuit Clerk.)

57 "STATE OF ILLINOIS, } ss:
Fulton County, }

In the Fulton County Circuit Court, to the September Term, A. D. 1902.

LYDIA BRADLEY }
v. } Injunction, &c.
H. W. LIGHTCAP. }

We do hereby enter the appearance of the defendant, H. W. Lightcap, in the above entitled cause, and waive the issuing and service

of process upon him, and consent that any and all steps can be taken and had in said cause which might or could have been had or taken had a summons been regularly issued out of the office of the circuit clerk of Fulton county, Illinois, and duly and regularly served upon said defendant, more than ten (10) days prior to the first day of the present term of said September term of court.

WALLACE & LACEY AND
H. W. MASTERS AND
GEO. B. FOSTER,
Solicitors for Defendant."

(Filed Aug.-20-1902.

J. C. SEVERNS,
Circuit Clerk.)

58 And be it remembered that heretofore, to-wit: on September 16, 1902, there was filed in the above entitled cause, affidavits in support of bill for injunction, which said affidavits are in the words and figures following, that is to say:

"In the Circuit Court in and for the County of Fulton, in the September Term, A. D. 1902.

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } Bill for Injunction.

STATE OF ILLINOIS, }
Peoria County, } *ss:*

Lydia Bradley, being first duly sworn on oath, states that she is a resident of the county of Peoria and the State of Illinois, and is 86 years of age. That on or about the 30th day of June, 1867, she was the owner and holder of a certain mortgage and notes of Thomas B. Breedlove in the sum of $19,616 secured upon 1200 acres of land in Mason county, Illinois, described as follows: N. E. $\frac{1}{4}$ sec. 22; E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ sec. 22; S. $\frac{1}{2}$ of sec. 23; all sec. 26 in town 23 N., range 6 W. of the 3rd P. M. That afterwards on or about the 13th day of August, 1868, Benjamin S. Prettyman a resident of Pekin, Tazewell county, Illinois, called upon affiant and stated that he had purchased said lands from Thomas Breedlove subject to the mortgage aforesaid. That he had now arranged for a sale of 680 acres of the land to one Absolom McCune who was a large cattle dealer and would use the said lands for pasturage for cattle which he would buy in the West. That the 680 acres sold to McCune was the best part of the 1200 acres and that the purchase price was $25,000, and that said McCune would pay in cash all but $15,000 for which he proposed to give a mortgage upon the

680 acres of land to secure his three notes of $5000 each,
59 due in one, two and three years from date. These notes said Prettyman desired to give to affiant in part payment of the amount due upon the said Breedlove mortgage, offering to pay the remainder in money. That said Prettyman further stated that the lands were all capable of being cultivated and part of them were then under cultivation and producing corn. Affiant replied that she would have the land- investigated and if they were as represented she would accept the said McCune notes as part payment of the Breedlove indebtedness and release the remaining 520 acres of land. That affiant then instructed her agent and business manager, Mr. Cockle, who was present at this conversation but who is now dead, to go and see the lands and report to her their condition and value. That subsequently said Cockle did report that the representations of said Prettyman were correct, but affiant now believes that said Cockle was either deceived by said Prettyman and shown lands other than those included in the McCune mortgage or else that he was fraudulently persuaded by said Prettyman not to visit the said lands at all but to make such report upon the strength of said Prettyman's representations. Affiant, however, relying upon and believing the said representations of Prettyman and the report of her business agent accepted said McCune notes which were made payable direct to her as part payment of said Breedlove mortgage, received the remainder of the amount in money and released the Breedlove mortgage. That when the interest became due in August, 1871, she was unable to get any reply to her letters notifying said McCune that the interest was due on his mortgage, and then set on foot inquiries and learned that the said McCune had left the State of Illinois, had never taken any possession of said lands at all but had left the State almost immediately after the execution of said papers, and affiant believes that said McCune was an irresponsible person,
wholly unable to make such payment as was represented to
60 have been made by him, and affiant believes no such payment ever was made but the transfer to said McCune and the mortgage back to this affiant were arranged and made by said Prettyman with a view to swindling and defrauding affiant. Affiant further learned that the taxes had not been paid upon the property since the date of said McCune mortgage and she thereupon redeemed the same from the tax sales of 1869 and 1870 and paid the taxes for 1871. She then caused the lands to be advertised for sale under the said trust deed, and on the day appointed for sale sent her agent down to Manito to attend the sale but he returned and reported that the lands were too swampy to farm, and could not be sold, and he had adjourned the sale. Affiant then sent Austin F. Johnson to see the lands and take possession of them and make such use of them as he could. This he did in the fall of 1871, but was unable at that time to secure a tenant. That her next effort was directed to setting aside the said transaction with Prettyman and the said release of said Breedlove mortgage and she placed the papers in the hands of her attorney for that purpose, and at the March term, 1872, of the

circuit court of Mason county, he filed a bill in chancery to set aside said transaction and said release, alleging the facts hereinbefore set forth. That in the summer of that year, she believes in the month of August, 1872, she went down to visit the lands and inspect them herself. That one Allison Breedlove who lived about two miles north and east of the lands went with her to examine the lands and she then found that all of said lands were low, wet and swampy except perhaps 20 or 30 acres known as Hickory Grove mound, which was 25 or 30 feet higher than the surrounding lands and of different soil and appearance. That there was no plowed ground upon the farm except about 11 acres of said land in the S. W. corner. That it was so swampy, low and wet that it would not even bear the weight of a horse. That it was incapable of use as farming land and could only be used for mowing hay and for
61 pasturage in the driest part of the year, when parts of the land would be solid enough to support cattle. That it was not worth more than $10 per acre. That no person was in possession or control of it but it was wholly abandoned and unused. That affiant thereupon took possession with the object and purpose of making the most she could of a very bad bargain and leased the land to said Allison Breedlove upon the terms then and there agreed upon and put said Allison Breedlove in possession of said lands to cut and sell the hay and to take in cattle for pasturage, paying her one-half the net proceeds of the land: that the said Allison Breedlove then and there took possession of said property and from that time until about the year 1881 when he left the State of Illinois, he was continuously in the open, exclusive possession of said property, as tenant of affiant, keeping out trespassers and appropriating the said land to the use of this affiant so far as it was possible in its condition. That during the last two or three years of Breedlove's lease he sub-let the whole property to John A. Coddington who cut and sold considerable hay.

That in December, 1881, affiant undertook to improve the property and reduce some of it to cultivation, and for that purpose built a house on the mound, costing about $1000 and made a lease to W. N. Hitchcock and Jacob Behner, but the effort proved a failure on account of the swampy soil, and said John A. Coddington took the property again and continued to use it for hay taking a lease from affiant for all of said lands and succeeded to the possession and from that time until March 1st, 1895, said John A. Coddington and his sons Phineas Coddington and Wally B. Coddington occupied the whole of said premises living upon them and having the open, undisputed and exclusive possession of said lands as tenants under affiant.

That in the fall of 1884 affiant began to improve said
62 premises by ditching, fencing, breaking the sod and erecting farm buildings. That by the organization of the Hickory Grove drainage district and the construction of a system of ditches through said lands and adjoining lands the water was drained off and the lands were made dry enough

to cultivate. But not until the summer of 1885 were the lands dried out sufficiently to enable affiant to break up the sod. That affiant began at that time to reduce the land to cultivation but found the land so heavy that breaking was very expensive and she was obliged to pay large sums of money, to-wit, the sum of $3.50 per acre for getting said sod broken. That after said lands were broken they proved to be infested with wire worms, cut worms and other pests which almost totally destroyed the crops for several years. That the soil itself proved to be very light, almost like peat and the corn failed to reach maturity before frosts came on in the fall so that for several years the crops were of very little value. But affiant persisted in her efforts to reduce said land to cultivation and applied various fertilizers and correctives to said soil and by having analysis of the soil made, she was finally successful in correcting the deficiencies of said soil, so as to make it productive. But affiant shows that she was put to much expense in doing this and that the expense of breaking and correcting said soil was greater than the total income derived from the crops for many years after it was drained.

And affiant further states that afterward said farm was divided into three parts and said Wally B. Coddington and Phineas Coddington were each given farms and affiant then erected two more dwelling houses at an expense of $1000 each, three barns at an expense of $500 each, and three corn cribs at an expense of $500 each, for the accommodation of said additional tenants.

Affiant also paid all of the general taxes accruing against said lands amounting to the sum of $5000 on the first day of July, 1895.

That she also paid all of the drainage assessments in said
63 Hickory Grove drainage district amounting to over $5000 on the 1st day of July, 1895.

And affiant further shows that said bill in chancery to set aside the release of the Breedlove mortgage was prosecuted in the circuit court of Mason county and was defended and resisted by said B. S. Prettyman for seven years until October, 1879, when a decree was rendered not in accordance with the prayer of the bill but finding that said McCune mortgage was the only lien upon said premises and ordering a foreclosure thereof. That this was a defeat for affiant and she then realized that she must take the lands she had possession of as payment of the mortgage debt and interest. That when said land was sold at the master's sale she had the same struck off and bid in for her at the sum of $10,000 for the purpose of protecting her title and possession and preventing the arising of an outstanding title against said lands. That the certificate of purchase was taken and held by her attorneys Johnson, Dearborn and Campbell and affiant has no recollection of ever having seen it. But afterwards in 1885 when said Johnson reported to her the results of said litigation he advised her that the title was now in her and that she had got a complete title to said lands but had been defeated in her effort to recover and secure the remaining lands released from said Breedlove mortgage. That affiant under-

stood and believed that a deed had been issued to her by the master in chancery in such foreclosure suit but is not now able to find such a deed nor has she been able to find the said certificate of purchase. That thereafter she continued to hold the said lands as she had done from the time she took possession in 1872, claiming to be the owner thereof and has ever since held such possession and claimed such ownership. That she has paid all of the taxes accruing thereon and no person or persons has ever interferred with her possession or claimed any right to said lands up to July 13th, 1895, when
64 the said Henry W. Lightcap, defendant in the above entitled cause brought actions of ejectment in the circuit court of Mason county against the tenants of affiant in possession of said lands, claiming to be the owner thereof in fee. That affiant immediately entered her appearance and was substituted as defendant in place of her said tenants and upon her motion the case was transferred to Fulton county for trial. That the first trial took place at the March term, 1896, resulting in a judgment against the plaintiff. That the plaintiff in said case appealed to the supreme court of the State of Illinois and at the October term of said court the said judgment was reversed and the cause remanded to the circuit court. That affiant caused her attorneys to apply for a re-hearing which was granted and the case was again argued before the supreme court of the State of Illinois at the December term, 1898. That afterwards on the 19th day of October, 1899, the said supreme court re-affirmed its former opinion holding that affiant had no title to said premises because she was unable to show that she had taken out a deed from the master in chancery within a certain time limited by the statutes of the State of Illinois. But affiant caused her attorneys to make a further application for a second re-hearing before said court, which was granted at the February term, 1900, and said cause was again re-argued, but on the 19th day of October, 1900, the said supreme court of the State of Illinois again adhered to its former opinion reversing and remanding said cause. That afterwards at the May term of the circuit court of Fulton county, 1901, said cause came up again for trial before said court and affiant made such defense as she was able under the rulings of the said supreme court, but said cause was taken from the jury by the trial court and the said jury were instructed to find affiant guilty as alleged in the said declaration. And thereupon judgment was entered in favor of said H. W. Lightcap. But affiant being advised that under the laws of the State of Illinois
65 she was entitled to a second trial of said cause as a matter of right made application to said court for such new trial and the same was granted and said cause now stands for hearing *de novo* at the January term, 1902, of said circuit court of Fulton county.

And affiant further shows that it appears by the deeds offered in evidence at such trial that said Benjamin S. Prettyman after the execution and delivery to affiant of said mortgage by Absalom McCune took a reconveyance of said property subject to said

mortgage to himself and that at the time of the prosecution of said bill in chancery in the circuit court of Mason county he was the holder of the equity of redemption and continued ever after to be the holder of such equity of redemption until the same was extinguished by such foreclosure proceeding, and not until a very short time before the commencement of said ejectment suits by the defendant herein did he make the conveyance to the defendant under which he claimed in said ejectment suits. That said H. W. Lightcap was at that time a resident of Havana in Mason county which is within a few miles of the lands hereinbefore described and that said H. W. Lightcap knew that the lands were in possession of affiant and her tenants but made no inquiry of them or of her and gave no notice to affiant or her tenants that he had or claimed to have any title to said lands. That said Lightcap might have ascertained by visiting the lands or by calling upon affiant what her right, title, interest and claim to said premises was, but that the first notice affiant had of said Lightcap's claims was when service was made upon her tenants in the actions of ejectment above referred to. That said Prettyman lived within ten miles of said lands, was frequently in the vicinity and was able to know, and affiant believes did know, of the improvements, expenses and betterments which affiant was bestowing upon said premises, but during all that time he made no claim to title or ownership and never dis-
66 closed to affiant or her agent or tenants that he had or claimed to have any interest in said premises. That Pekin is only ten miles from Peoria where affiant resides and said Prettyman could at any time have communicated with affiant.

And affiant further shows that by means of the improvements she has put upon said premises the land has increased in value so that it is now worth and would sell in the open market for $65.00 per acre. That said McCune has never returned to the State of Illinois so far as she is aware and that the deficiency judgment against said McCune in said foreclosure proceeding has never been paid. That neither said McCune nor said Prettyman nor any defendant in said foreclosure suit ever paid or offered to pay to affiant any part of said indebtedness or to redeem said premises from said foreclosure sale.

LYDIA BRADLEY.

Subscribed and sworn to before me, this 6th day of May, A. D. 1902.

CLARA E. COMSTOCK,
[SEAL.] *Notary Public.*

STATE OF ILLINOIS, }
County of Fulton. }

— Court of said County, September Term, A. D. 1902.

LYDIA BRADLEY }
vs. } Bill for Injunction.
H. W. LIGHTCAP. }

STATE OF ILLINOIS, }
Peoria County, } *ss:*

Austin F. Johnson being first duly sworn on oath states, I am 55 years old and a resident of the city of Peoria. I was book-
67 keeper and business agent of Lydia Bradley from July 1, 1871, to some time in 1880. Among her securities I found three notes of Absolom McCune for $5000 each, drawing 7 per cent. semi-annual interest, secured by trust deed in land in Mason county, Illinois. The notes bore date 1868. The interest was past due and I notified McCune by mail, but the letters came back uncalled for. I never got any response, and never succeeded in finding him although I made great efforts to do so.

I also discovered that the taxes on the property had not been paid from the date of the trust deed, and I redeemed the land and paid the taxes of 1871.

Then I went down to Manito in 1871, can't fix the date, to see the land and see what we could do with it. I found it abandoned and no one looking after it. I went onto it and walked over as much of it as I could, with the purpose of taking possession of it for Mrs. Bradley. At tha time I was not able to make any arrangements with any one to take charge of the land, but later opened negotiations with Allison Breedlove which resulted in his taking a lease. From that time on we had exclusive possession of the property and derived some income from it. At the same time Mrs. Bradley prosecuted a suit to recover the other lands she had released.

No one claimed those lands or disputed her right to them and I took them and managed them just the same as I did other lands belonging to Mrs. Bradley. We knew McCune had left the country and the land was not worth the debt, so we considered the lands Mrs. Bradley's and never expected them to be redeemed.

AUSTIN F. JOHNSON.

Subscribed and sworn to before me, this 22nd day of May A. D. 1902.

CLARA E. COMSTOCK,
[SEAL.] *Notary Public.*

68 STATE OF ILLINOIS, } ss:
Mason County, }

George Gilson, being duly sworn on oath states, I reside at Havana, Illinois, am fifty-four years old. I lived in Mackinaw Bottom in 1872 on land adjoining the Lydia Bradley farm on the north. I worked for Bart Breedlove, a brother of Allison Breedlove. I knew the latter very well. He lived about two miles from us. I assisted him in looking after Mrs. Bradley's land from 1872 to 1875. I was present when Mrs. Bradley visited the land in 1872. She came down with Mr. Breedlove in a buggy and I rode over a horse back. She went onto the land a little ways but could not go far as the land was very low and swampy. I heard some of the conversation between her and Mr. Breedlove about his taking charge of the land for her upon a percentage of the profits. From that time Allison Breedlove acted as Mrs. Bradley's tenant and agent for the property. I used to watch people from going in there and cutting wood off of Hickory Grove mound. I was there all the time looking after cattle and Mr. Breedlove told me if anybody wanted any grass or to turn in cattle I could attend to it for him. I was herding cattle on the adjoining land and did this as an accommodation to him. I helped put up fences around the ourside lines to keep the cattle in. We put up some fences the next spring after Mrs. Bradley was there. There were pieces of fence and posts along the lines but they would get burned off about every year when the fire ran over the swamp and we had to repair them. We strung some new wire. We put up the fences to keep in cattle which we had taken in for pasture on Mrs. Bradley's land. The owners of the cattle made the arrangements with Mr. Allison Breedlove. Everybody in the neighborhood turned cattle in there. I was there as often as once a wee*l* and looked after the fences and pulled cattle out
of the mud when they got mired. There was a good deal of
69 hay cut off of the land during this time. The people who cut the hay bought it of Mr. Allison Breedlove. They went in and selected their own place for cutting the hay, picking out the highest spots and most convenient to get at the hay. I also knew Benjamin S. Prettyman intimately. He owned land adjoining on the north and was frequently in that vicinity. I had many talks with him. Once in a while we used to josh him about selling the land and getting such a price for it and he would laugh in a joking way and say, "Why, Mrs. Bradley has got the money, she can spend it," or something of that kind and pass it off. He never denied that the land was Mrs. Bradley's. He said the land was wet and marshy but Mrs. Bradley had the money to ditch it. The land was very soft up there where Mrs. Bradley's land was but further north towards the Mackinaw creek the ground was harder and good farm land. You could not get across Mrs. Bradley's land with a wagon. There *was* only about two months in the year when cattle could pasture on it. There was a mound on the land which was

high, solid ground and on this there was considerable hickory timber. I used to have to watch people from going in there and cutting it. The place was known as the Hickory Grove mound and as the Widow Bradley land. The lands did not lie in open commons and cattle turned out onto the highways could not get onto this land without going over other people's farms. No cattle were put in there without permission of Allison Breedlove and no hay was cut off of there without his permission so far as we knew. Mr. Prettyman lived in Pekin about ten miles northeast of these lands.

GEORGE W. GILSON.

Subscribed and sworn to before me, this 23rd day of May A. D. 1902.

JOHN W. PITMAN,
Notary Public.

[SEAL.]

70 STATE OF INDIANA, } ss:
Morgan County, }

Allison Breedlove being first duly affirmed on oath states that he resides in Monrovia, Morgan county, Indiana. That prior to 1881 he resided in Tazewell county, Illinois, near the Hickory Grove mound, which is situated upon the land known as the Bradley farm. That affiant owned and lived on a farm about two miles from Hickory Grove mound. That he was acquainted with T. S. Bradley, now deceased, who was husband of Lydia Bradley, and after the death of said T. S. Bradley had frequent business relations with Lydia Bradley. That said Hickory Grove farm was a part of a large tract of land once owned by the Breedlove family, and affiant had been familiar with it many years prior to the time it came into the possession of Lydia Bradley. That affiant's uncle Bales Breedlove when he was the owner of the land, fenced it and used it for pasture, and although fires frequently burned over the land in the fall, portions of the fence remained, and the owners were accustomed to fix them up each year so as to keep cattle in. That affiant and Tom Breedlove subsequently became the owners of said land, although the title stood in the name of Tom Breedlove. That Tom Breedlove borrowed money from T. S. Bradley on 1200 acres of the Breedlove tract, including the 680 acres now claimed by Mrs. Bradley. That subsequently he sold the 1200 acres to Benjamin S. Prettyman, who resided at Pekin, Illinois, about ten miles from the land, subject to said mortgage to Bradley. That while said Prettyman was the owner of said lands he used them in much the same manner that other owners had done, and cleaned out and deepened the ditches. Afterwards through some arrangement with Mrs. Bradley of which this affiant had no direct knowledge said Prettyman claimed to have sold the 680 acres to one Absolom McCune, and to have secured the release of the 520 acres lying to the south, and
71 said Prettyman continued to claim and exercise acts of ownership over said 520 acres of land and afterwards sold them to

one Henry Dix. McCune was a man of no means. Just worked around at odd jobs, and never did anything with the land but left the country soon after the deal was made and was never heard of in those parts afterwards.

Some time after this transaction Mrs. Bradley inquired of me about the lands and about McCune. I told her what I knew and offered to take her over to see the land. I knew from what I had heard of the transaction, which piece had been deeded to McCune. So she came down to Green Valley in the summer of 1872, in real warm weather, and I took her over to the land. It was all swamp land except the mound, which stood up like an island in the middle of the swamp and was a different formation. She tried to walk out onto the land stepping from one bunch of grass to another, but could not go far. Some parts of the land were more solid than the place she tried. She was very much surprised to find the land so poor. She offered me a lease of the land if I would give her one half of the net proceeds of the hay and pasturage, and I accepted her offer. I took charge of the land at once, and from that time until some time in 1881 when I came to Indiana, I had the exclusive control and possession of the land as tenant under Mrs. Bradley, and made regular settlements with her for the proceeds of the hay and pasturage. I sold the hay on the ground, the purchaser choosing the best place to cut and paying by the acre or ton for what he took off. I also took cattle to pasture and made fences enough to keep them in. No one was permitted to get hay or turn cattle in there without my permission and I believe I had exclusive possession of the land all that time and I made all the use of it possible in its condition at that time.

During all this time Benjamin Prettyman was a frequent
72 visitor at our house and knew that I had charge of the land for Mrs. Bradley, and frequently talked with me about it. When reference was made to the manner in which he had unloaded the land upon Mrs. Bradley, he would reply that he would let Mrs. Bradley have it. She was able to drain it.

Affiant further states that he then owned and still owns large tracts of land in that vicinity and had owned and dealt in similar lands in that vicinity, and was acquainted with the values of such lands; that the lands referred to were worth at that time not more than $10.00 per acre.

That for a year or two before affiant left Illinois he sublet all of said lands to John A. Coddington who made roads through the land and cut a great deal of hay, and affiant left him in possession of the lands.

And further affiant saith not.

ALLISON BREEDLOVE.

Subscribed and affirmed to before me, this 23 day of May A. D. 1902.

N. E. HUBBARD,
Notary Public.

[SEAL.]

My com. expires Oct. 30th 1902.

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73 STATE OF ILLINOIS, } ss:
Mason County, }

Phineas Coddington, being first duly sworn on oath states, that he is a son of John A. Coddington, thirty-six years old, and resides in Mason county. That he knew the Hickory Grove farm or Lydia Bradley farm and lived on it with his father, going there in 1878. That they occupied the whole of the farm which was then low, wet, swamp land and used only for cutting hay. That there had been fences around the land before they moved onto it and there were still evidenced of the fences partly burned off but sufficient to mark all of the lines on all sides of the land. There was a ditch on the west line at that time. Later when the land was drained by the Hickory Grove drainage district a ditch was run on the east line and the ditch on the west line was deepened and in so doing the fence posts referred to were dug up and affiant pulled a good many of them out of the land. It was evidently an old fence. There was one small piece of the land, about eleven acres, in the southwest corner which came up onto the sand land and was dry enough to cultivate. This was all the land of the 680 acres which was cultivated at the time we went onto the place. The first three years we rented under Allison Breedlove who was acting as Mrs. Bradley's agent for the land. After that my father took a lease directly from Mrs. Bradley. Later when I married, Mrs. Bradley divided the farm and gave me a lease of 240 acres of the east side. She had already built a house there for my father and at this time built another house on the west side of the mound for him and I took the old house for my own. She also built a barn and a corn crib at each place. Later on when my brother Wally Coddington came of age she gave him the west 200 acres of the land and built a house and barn and corn crib on that. After the dredge boat had gone through and dug the main ditches Mrs. Bradley laid tiling all through the land at an expense of about $600. All of the buildings, fences,
74 etc., must have cost more than $5000. I remember going with my father to Pekin at one time, where we met B. S. Prettyman at his office and he talked with us about the farm. He knew that we were tenants on Mrs. Bradley's farm and seemed to be well posted about what was going on in the neighborhood. He said that he had once owned the land and mentioned what ditching and fencing he had done there when he owned it. He made no claim that he had any interest in it at this time. During all of the time we lived on the farm I never heard any one make any claim to the possession or the title of the farm as against Mrs. Bradley. I moved off the place in 1894. The first house was built in 1881, the last one in 1892.

PHINEAS CODDINGTON.

Subscribed and sworn to before me, this 23rd day of May, A. D. 1902.

JOHN W. PITMAN,
Notary Public.

[SEAL.]

75 STATE OF ILLINOIS, } ss:
Mason County, }

John A. Coddington being first duly sworn on oath states, that he is a resident of the county of Mason and State of Illinois, and is sixty years of age. That he has known the Hickory Grove farm also called the Lydia Bradley farm since 1878. That he rented the hay ground on said farm from Allison Breedlove as agent of Lydia Bradley in that year and from that time on until said Allison Breedlove gave up the land and left the State affiant rented the hay land from him and paid the rent to him as such agent of Lydia Bradley. That after said Allison Breedlove gave up the land affiant took the lease of all of said land consisting of 680 acres and with himself and two sons continued to occupy the land until 1894 just before the commencement of the ejectment suits by H. W. Lightcap against Mrs. Bradley's tenants. That affiant then removed to another farm of Mrs. Bradley's and was succeeded in the possession of said Hickory Grove farm by other tenants of Mrs. Bradley.

That when affiant first knew the farm it was low, wet, swampy land, unfit for cultivation and no part of it capable of cultivation except one corner which ran up onto the said land, about eleven acres of which was dry enough to farm, and one half of Hickory Grove mound which was like an island in the swamp and was used for pasture and later for the site of the dwelling houses. The mound was covered with hickory timber. That affiant first rented the ground from Allison Breedlove at $1.00 per acre for the hay he could cut off of it, and built hay roads and cut canals through the land so as to enable him to get the hay off. A part of the time the hay was loaded onto boats and floated out. That during this time affiant had exclusive use of all of the lands under Allison Breedlove and later when he took a lease of them himself he had exclusive use of all of the
76 lands and was in the open and exclusive possession thereof as tenant of Lydia Bradley. That the lands in the condition they were when affiant took them were of comparatively little value and were estimated to be worth all the way from $1.00 to $10.00 per acre. That soon after affiant took a lease to himself Mrs. Bradley built a house on the Hickory Grove mound costing about $1000. She also furnished him with a car load of cedar posts and he began fencing the land and from that time on work was continued upon the property in the way of fencing, ditching and draining until the Hickory Grove drainage district was formed in 1885 when the land was thoroughly drained of water by a large ditch running through the land and also on the east line. After the land became dry enough to plow Mrs. Bradley hired me to break the land up, paying me $3.00 an acre for the breaking. It was very difficult work, the land being full of strong hard roots, and when broken up it was so soft that plows would not scour in it and the land was like decomposed vegetable matter, so light that it could not turn over with

the plow. As soon as it became dried out it was inflammable so that we could not burn the corn stalks on the ground without setting the ground afire and when a fire got started in the soil it would burn clear down to the water and destroy the soil. It was necessary to keep constantly on the lookout for accidental fires and frequently to fight the fire for days in order to save the land. After the land had been broken we tried growing corn upon it but the soil seemed to be different from other lands and the corn did not get ripe but would be still growing when the frosts came in the fall. It was also infested with wire worm-, cut worms and other pests year after year so that it was very unproductive and difficult to manage. After the ground got thoroughly dried out it began to crack open so that a horse could not walk across
77 it and it became impossible to plow the land in any ordinary way. We were obliged to rig wire ropes across the land and draw the plow and plow the cracks shut. It was more difficult work than the original breaking. These difficulties continued for several years so that it was not until a very short time before I left the farm that it began to produce as much as it cost, to farm it.

When my eldest son, Phineas Coddington, married, Mrs. Bradley built another house on the mound and also built a large corn crib holding 5000 bu. of corn, and a barn holding ten head of horses and their feed. She also built a new barn on the place where I lived. When my second son came of age she built another house on the farm for him, together with a barn and corn crib. These improvements must have cost in the neighborhood of $5000. She also laid tile from the main ditches over all of the land at a large cost and expense. It was also necessary to throw up a road across the swamp leading to town and this road ran on Mrs. Bradley's north line and she paid for half of the work of throwing up the road and digging the ditch along the side.

I knew B. S. Prettyman very well and saw him frequently. He owned land in the immediate vicinity of this farm and was frequently in the neighborhood.

Affiant at one time had some conversation with him in regard to the farm in which Mr. Prettyman showed a full knowledge of what was being done with the land and that it had been redeemed from water and highly improved and spoke of the land as property that he had once owned and told what he done with the land when he owned it. But at no time during the tenancy of affiant did anybody ever claim any right, title or interest in said property or right to the possession thereof except Lydia Bradley.

JOHN A. CODDINGTON.

78 Subscribed and sworn to before me, this 23rd day of May, A. D. 1902.

JOHN W. PITMAN,
Notary Public.

[SEAL.]

(Filed Sep.-16-1902.

J. C. SEVERNS,
Circuit Clerk.)

And be it remembered that afterwards, to-wit: on September 29, 1902, the same being one of the regular days of said term of said court, the Honorable G. W. Thompson, judge, presiding, the following among other proceedings were had and entered of record in said court, in the words and figures, viz:

"LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } Injunction. #15471.

Now on this day comes the said defendant in the above entitled cause, by his solicitors, and files herein his demurrer to the bill of complaint of complainant. And the said complainant being present in court, by her solicitors, the hearing of this cause is begun."

And said demurrer as aforesaid, being in writing, a copy thereof is hereto appended, in the words and figures following, that is to say:

"STATE OF ILLINOIS, } *ss:*
County of Fulton, }

In the Circuit Court of Fulton County, September Term, A. D. 1902.

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } Injunction.

And now comes the defendant, H. W. Lightcap, by Wallace & Lacey and Foster and Masters, his solicitors, by way of protestation, not confessing or admitting any of the matters and things in complainant's bill of complaint to be true, as therein alleged, and says that said complainant ought not to have or maintain her said bill against this defendant, because the matters and things set forth in
79 said bill are not sufficient in law or equity for this defendant to answer unto; and of this the defendant prays judgment of this court, etc.

WALLACE & LACEY,
FOSTER & MASTERS,
Solicitors for Defendant.

In addition to the aforesaid demurrer, the defendant assigns the following special causes:—

1st. The bill contains immaterial and irrelevant matter.

2nd. The bill seeks to controvert and annul the proceedings and decree of the circuit court of Mason county, in the suit of Lydia Bradley *vs.* Absolom McCune *et al.* rendered more than twenty years ago.

3rd. The bill seeks to make a court of review of this court, to re-

view and correct alleged errors in the judgment and opinions of the supreme court of this State in the ejectment suit of Lightcap *vs.* Bradley, referred to in said bill.

4th. Because said bill shows that the complainant has an adequate remedy at law.

5th. Because the said bill is too indefinite, uncertain and insufficient.

6th. Because said bill shows laches on the part of the complainant, and seeks to avoid the effort of her own laches.

7th. And for other good and sufficient causes appearing on the face of the bill.

WALLACE & LACEY,
FOSTER & MASTERS,
Sol. for Def't."

(Filed Sep.–29–1902.

J. C. SEVERNS,
Circuit Clerk.)

80 And be it remembered that afterwards, to-wit: on October 1st, 1902, the same being one of the regular days of said term of said court, Honorable G. W. Thompson, judge, presiding, the following among other proceedings were had and entered of record in said court, in the words and figures, viz:

"LYDIA BRADLEY *vs.* H. W. LIGHTCAP. } Injunction. # 15471.

On this day come the respective parties to this suit, by their solicitors, and the hearing of this cause is completed, and of its decision of the matter the court doth further consider."

And be it remembered that afterwards, to-wit: on October 17th 1902, the same being one of the regular days of said term of said court, Honorable G. W. Thompson, judge, presiding, the following among other proceedings were had and entered of record in said court, in the words and figures, viz:

81 "LYDIA BRADLEY *vs.* H. W. LIGHTCAP. } Injunction. # 15471.

And now on this day this cause having come on to be heard upon the demurrer of the defendant to the bill of complaint herein; and the court having heard the arguments of counsel for the respective parties, and being fully advised in the premises, doth find that the equities of this cause are with the defendant, and that the defendant's demurrer to said bill of complaint of complainant should be sustained, and complainant electing to stand by her bill and refusing to plead further.

Now, therefore, on consideration thereof, it is ordered, adjudged and decreed; and the court doth hereby order, adjudge and decree, that the demurrer of the said defendant to the said bill of complaint of complainant be and the same *are* hereby sustained; and that the said bill of complaint be, and the same is hereby dismissed for want of equity with costs to the defendant and against the complainant, to be taxed by the clerk of this court.

And to which finding and decree of the court, the complainant then and there excepted, and prays an appeal to the supreme court of the State of Illinois; which is hereby granted and allowed, upon complainant filing an appeal bond in the sum of five hundred dollars within thirty days from the rendition of this decree, said bond to be approved by the clerk of this court.

G. W. THOMPSON, *Judge.*"

82 Said appeal bond to the supreme court of the State of Illinois, having been filed herein, and approved by the clerk of this court, a copy thereof is hereto appended, in the words and figures following, that is to say:

"Know all men by these presents, that we Lydia Bradley, George W. Scott, and Harry A. Hammond of the county of Fulton and State of Illinois, are held and firmly bound unto H. W. Lightcap in the penal sum of five hundred dollars, for the payment of which well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Peoria Ill. this 25 day of October in the year of our Lord one thousand nine hundred and two.

The condition of the above obligation is such, that whereas, the said H. W. Lightcap did, on the 17" day of October one thousand nine hundred and two at a term of the circuit court, then being holden within and for the county of Fulton, and State of Illinois, obtain a judgment of dismissal against the above bounden Lydia Bradley and for costs of suit, in the cause therein pending upon the chancery side thereof for injunction & relief wherein Lydia Bradley was plaintiff and H. W. Lightcap def't from which judgment the said complainant has prayed for and obtained an appeal to the supreme court of the said State of Illinois.

Now if the said Lydia Bradley shall duly prosecute said appeal, and shall moreover pay the amount of said judgment, costs, interest and damages, rendered and to be rendered against her the said Lydia Bradley in case the said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void, otherwise to remain in full force and virtue.

LYDIA BRADLEY. [L. S.]
GEORGE W. SCOTT. [L. S.]
HARRY A. HAMMOND. [L. S.]

(Filed and approved this 28th day of Oct. A. D. 1902.
J. C. SEVERNS, *Clerk.*)

83 STATE OF ILLINOIS, } ss:
County of Fulton, }

I, J. C. Severns, clerk of the circuit court of the county of Fulton, in the State aforesaid, and keeper of the records and seal thereof, do hereby certify the above and foregoing to be a true and complete copy of all of the pleadings, orders of court, decree, appeal bond, records and proceedings in a certain cause lately pending in said court, on the chancery side thereof, wherein Lydia A. Bradley was complainant and H. W. Lightcap was defendant, as the same appears from the records and files in my office now remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 1st day of November, A. D. 1902.

[SEAL.] (Signed) J. C. SEVERNS,
Clerk of the Circuit Court and Keeper of the Records and Seal Thereof.

84 STATE OF ILLINOIS, } ss:
Fulton County, }

LYDIA BRADLEY, Complainant,
vs.
H. W. LIGHTCAP, Defendant. } Appeal from Fulton.

To the justices of the supreme court of the State of Illinois:

Now comes Lydia Bradley, complainant in the foregoing proceedings, by W. W. Hammond and Chipperfield & Chipperfield her solicitors, and shows that in all the said proceedings there is manifest error, in this, to-wit:

The circuit court erred in sustaining the demurrer to complainant's bill, and in dismissing the same for want of equity.

The circuit court erred in not overruling the said demurrer and requiring defendant *ot* answer.

W. W. HAMMOND AND
CHIPPERFIELD & CHIPPERFIELD,
Solicitors for Complainant.

85 Supreme Court of Illinois, December Term, A. D. 1902.

LYDIA BRADLEY, Appellant,
vs.
H. W. LIGHTCAP, Appellee. } Appeal from Fulton. Injunction.

Additional Assignment of Errors.

Now comes the appellant by W. W. Hammond and Chipperfield & Chipperfield, her solicitors, and by leave of court first had and obtained, presents the following additional assignment and specification of errors and says, that in the record and proceedings and in

the rendering of the decree of the circuit court aforesaid, and in the foregoing record, there is manifest error in this to-wit:

1. The circuit court erred in not holding that the certain statute of Illinois approved March 22nd 1872, in force July 1st 1872, entitled "An act in regard to judgments and decrees and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree;" and section 30 thereof, set out in said bill of complaint, did not apply to the case, right title and equity of appellant, set forth in her said bill of complaint.

2. The construction and interpretation and application by said circuit court of said statute of the State of Illinois, approved March 22nd, 1872, (and more fully entitled and described in the additional assignment and specification of errors, number one (1) foregoing) was and is unconstitutional and in violation of section 10 article one of the Constitution of the United States of America.

2. The construction and interpretation and application by said circuit court of said statute of the State of Illinois, approved March 22, 1872, (more fully entitled and described in the additional assignment and specification of errors, number one (1) foregoing) was and is unconstitutional and in violation of section 10 of article one of the Constitution of the United States of America.

86 3. The construction and interpretation and application by the said circuit court, of said statute of the State of Illinois approved March 22, 1872, (and more fully entitled and described in the additional assignment and specification of errors number one (1) foregoing) was and is unconstitutional and in violation of section 14, of article two, of the constitution of the State of Illinois.

4. Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors number one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, is unconstitutional, and in violation of section 10 of article one of the Constitution of the United States of America.

5. Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors number one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, is unconstitutional and in violation of section 14, of article two of the constitution of the State of Illinois.

6. The construction and interpretation and application by the circuit court, of said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in the additional assignment and specification of errors, number one, (1) foregoing) was and is in violation of a certain statute of the United States known and called section 1979 of the Revised Statutes of the United States according to the revision of 1874, approved June 22nd 1874.

7. Said statute of the State of Illinois, approved March 22, 1872, (and more fully entitled and described in additional assignment and specification of errors number one (1) foregoing) and section 30 of

said statute, as construed and applied by the circuit court in this case, was and is in violation of a certain statute of the United
87 States known and called section 1979 of the Revised Statutes according to the revision of 1874, approved June 22nd, 1874.

8. The circuit court erred in not finding the allegations of the bill sufficient to establish equitable title in the complainant as against the defendant.

9. The circuit court erred in not finding the allegations of the bill sufficient to show a complete divestiture of the title of defendant in equity, as against complainant.

10. The court erred in not finding the allegations of the bill sufficient to create an equitable estoppel against defendant.

Wherefore and for other manifest errors, in violation of the Constitution and laws of the United States, the appellant prays that said decree of said circuit court may be reversed and set aside and held for naught and said cause remanded for further proceedings in conformity to said Constitution and laws of the United States of America.

Respectfully submitted.

W. W. HAMMOND AND
CHIPPERFIELD & CHIPPERFIELD,
Solicitors for Appellant.

88 And afterwards, to-wit: on the 10th day of December, A. D. 1902, certain proceedings were had in said court and entered of record, in the words and figures following, viz:

LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } 2865. Appeal from Fulton.

And now on this day leave is granted appellant to make additional assignment of errors in the record herein.

And afterwards, to-wit: on the 13th day of December A. D. 1902 certain proceedings were had in said court and entered of record, in the words and figures following, viz:

89 LYDIA BRADLEY
vs.
H. W. LIGHTCAP. } No. 2865. Appeal from Fulton.

Now on this day come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that —— —— appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee —— —— having en-

tered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause — is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

90 At a supreme court, begun and held at Springfield on Tuesday, the seventh day of April, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice. Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Carroll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice, Howland J. Hamlin, attorney general. Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk*.

Be it remembered, to-wit, on the twenty-fourth day of April, A. D. 1903, the same being one of the days of the term of court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

LYDIA BRADLEY
v.
H. W. LIGHTCAP. } No. 2865. Appeal from Fulton.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: Therefore it is considered by the court, that the decree aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error, and it is further considered by the court, that the said appellee recover of and from the said appellant his costs by him in this behalf expended, and that he have execution therefor:

91 At a supreme court, begun and held at Springfield on Tuesday, the seventh day of April, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois,

Present: Benjamin D. Magruder, chief justice. Jacob W. Wilkin, justice, Joseph N. Carter, justice, James H. Cartwright, justice, Car-

roll C. Boggs, justice, John P. Hand, justice, James B. Ricks, justice. Howland J. Hamlin, attorney general. Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to-wit, on the 24th day of April, 1903, the opinion of the court was filed in the words and figures following, to-wit:

LYDIA BRADLEY *vs.* H. W. LIGHTCAP. } No. 2865. Error to —. Appeal from Fulton.

92 Docket No. 2865, Agenda 37, Northern Div., Dec., 1902.

LYDIA BRADLEY *v.* H. W. LIGHTCAP.

Mr. Justice CARTWRIGHT delivered the opinion of the court:

The appellee, H. W. Lightcap, brought five suits in ejectment in the circuit court of Mason county against tenants of the appellant, Lydia Bradley. Upon changes of venue the suits were transferred to Fulton county, where they were consolidated by agreement and appellant was substituted as defendant. The consolidated suit was for the recovery of six hundred and eighty acres of farm lands. Upon a trial before the court there was a finding and judgment in favor of appellant. Appellee brought the case to this court by appeal, and the judgment was reversed and the cause was remanded to the circuit court for further proceedings in accordance with the views expressed in the opinion then filed. (Lightcap *v.* Bradley, 186 Ill. 510.) The cause was re-instated in the circuit court and was again tried, resulting in a judgment against appellant. She took a new trial as provided by the statute, and then filed the bill in this case to enjoin the further prosecution of the ejectment suit. A demurrer was sustained to the bill, and appellant having elected to stand by the bill it was dismissed for want of equity, and she appealed.

The substantial averments of the bill are as follows: That on June 30, 1867, complainant was the owner of a mortgage given by Thomas B. Breedlove on twelve hundred acres of land in Mason county, including the six hundred and eighty acres involved in the ejectment suit, to secure $19,616; that Breedlove and wife conveyed the whole premises, subject to the mortgage, to Benjamin S. Prettyman, who on August 13, 1868, conveyed the six hundred and eighty acres to Absalom McCune, taking from McCune a trust deed on the same to E. G. Johnson, as trustee for complainant, to secure the payment of three notes for the sum of $5000 each, with interest at ten per cent., due in one, two and three years from date; that Prettyman

delivered said notes and trust deed to the agent of complainant in part payment of the Breedlove mortgage and she released said Breedlove mortgage; that on November 13, 1868, McCune and wife re-conveyed the six hundred and eighty acres to Prettyman; that
93 nothing was paid on the McCune notes and no taxes were paid on the land, and in 1871 she investigated and found the lands to be swampy and worthless, vacant and unoccupied; that she took possession and redeemed from tax sales and paid the current taxes, and at the March term, 1872, filed her bill in the circuit court of Mason county against Prettyman, McCune and others, alleging that she had been induced to accept the McCune notes by fraudulent misrepresentations as to the value of the lands, and praying the court to set aside the release of the Breedlove mortgage and foreclose the same upon the whole twelve hundred acres; that while said bill was pending, in the summer of 1872, complainant personally entered on said lands and employed Allison Breedlove to hold and look after the same for her, and put him in charge thereof, to rent them for pasture and cut hay from them; that said Breedlove took and held active possession of the property, putting up fences as they were needed to keep in stock, and cutting and selling hay, and continued in actual possession until 1878, when complainant leased the lands to John Coddington; that she gradually reduced the lands to cultivation and joined in forming a drainage district, by which they were thoroughly drained and became of great value as farming lands; that the bill filed in the circuit court was contested by Prettyman and was pending until 1879, when a decree adverse to complainant was rendered, decreeing the foreclosure of the McCune trust deed upon the six hundred and eighty acres instead of the Breedlove mortgage on all the lands; that the lands were sold under the decree by the master in chancery and were struck off to complainant for $10,000, leaving a deficit due from McCune of $21,000, which has never been paid; that the time allowed for redemption from the sale expired January 27, 1881, and no redemption was made; that she did not take out a deed on the certificate of purchase, but continued in the actual, adverse possession of the lands, and was in such possession when she filed the bill in this case; that after the expiration of the time for redemption she expended about $5000 in the drainage district, about $5000 in improvements and over $5000 in taxes on the property; that the trustee, E. G. Johnson, died intestate in June, 1885, and on June 11, 1894, his heirs sold the
94 lands at public sale, after notice as provided for in the trust deed, and they were struck off to complainant for $35,000, and said heirs-at-law conveyed the same to her in conformity with the power in the trust deed, and that on November 30, 1894, there was put on record a quit-claim deed of said lands from Benjamin S. Prettyman to the defendant, purporting to have been executed on September 4, 1895. The bill gives the history of the ejectment suit, and alleges that complainant has fully presented her defense at law and has no remedy by the rules of law, and can

only have relief in equity. The prayer of the bill is, that the defendant be permanently enjoined from further prosecuting the action of ejectment or asserting ownership of the lands or entering upon or taking possession thereof; that he be required to convey to complainant all his right, title and interest in the same, and that her right to the lands may be confirmed and established by a decree of the court.

In seeking a reversal of the decree of the circuit court, counsel say that they present and rely upon the following four propositions:

"(1.) Complainant entered into possession of the premises as equitable mortgagee, and is entitled to retain possession until she has received satisfaction of her debt.

"(2.) Complainant has equitable title to the premises, the title having been conveyed to Johnson for her use, as the owner of the debt, her possession having been taken to enforce the conditions of the trust, the foreclosure having determined her equitable title and right to have the premises sold to satisfy her debt, the sale and subsequent expiration of the period of redemption having given her a right to demand the conveyance of the legal title. Possession with absolute right to have the legal title is equitable title. Having once acquired this, and never forfeited or conveyed it, complainant is the equitable owner.

"(3.) Defendant is estopped to claim the premises. From August, 1872, to July 13, 1895, he and his grantor, having then all the title they claim now, stood by and witnessed the development of the premises from a swamp, worth, at most, $6800, to valuable farms, worth, at least, $40,000, without asserting their claim.

"(4.) The statute of 1872 is unconstitutional in so far as it declares complainant's certificate null and void. She is entitled to the
95 benefit of the limitation laws as they were at the date of her mortgage, and to be judged by the law as then promulgated by the courts."

The fourth of these propositions has already been directly disposed of by decisions adverse to it in Ryhiner *v.* Frank, 105 Ill. 326, and also in Bradley *v.* Lightcap, 201 *id.* 511, on the second appeal in the ejectment suit. The limitation act of 1872 being valid and constitutional, is equally binding upon the court in this case as in the action at law. Furthermore, if that act, which limits the life of a certificate of purchase and the rights of a purchaser thereunder to five years after the expiration of the period of redemption, were unconstitutional, or if the construction given to it rendered it unconstitutional, a defense upon that ground would be complete and adequate at law, and the unconstitutionality of the act would be no ground for a bill in equity. Complainant could not maintain her bill to have that question determined, since the circuit court, in the action of ejectment, would have full power to pass upon it and award to complainant all her rights. The constitutionality of the statute is now beyond question, and the only duty of the court is to enforce it according to its terms. Courts do not hesitate to execute the legislative will as expressed in statutes of limitation, or try to demonstrate

a hidden meaning or intention not expressed in the statute or contrary to its terms, for the purpose of defeating it. Mr. Justice Story, speaking of former efforts of that kind, said in Spring *v.* Gray, 5 Mason, 505: "Happily that period has passed away, and judges now confine themselves to the more appropriate duty of construing the statute rather than devising means to evade its operation."

The language of this statute is clear and unambiguous. Plainer terms could not have been employed for the purpose of setting bounds to the rights acquired by a certificate of purchase and limiting them to five years after the period of redemption. The statute was so construed in Peterson *v.* Emmerson, 135 Ill. 55. The court, in the absence of express legislation on the subject, had formulated in Rucker *v.* Dooley, 49 Ill. 377, an equitable rule based upon the analogies of the law, and it was urged upon the court that equity might order a conveyance based on a foreclosure sale after the certificate was barred. The court, speaking by Mr. Justice Baker, said (p. 60): "But this rule was abrogated by the legislative enactment of 1872, not only in respect to the period of limitation, but
96 also by the provision that if a deed was not taken out within the time limited the certificate should be null and void. It is sticking in the bark to say that, notwithstanding the certificate is null and void, yet the sale which it was given to evidence has such vitality and force that a court may decree, by virtue thereof, the peremptory and absolute transfer by its officer of the property and title of one person to another and different person. Such action on the part of the court is a virtual annulment of the mandate of the statute and an infringement of vested legal rights." In that case the purchaser asking relief was in possession. The statute was enacted because the legislature were not satisfied with the limitation fixed by the court in Rucker *v.* Dooley, either in respect to the period of eight years and three months, or the power of a court to give effect to the certificate after that time, within twenty years. If they had been satisfied with the rule of the court in either respect they would not have changed it in both. The statute fixed the limitation at five years, and abrogated the rule that the purchaser should have any right after that time, by declaring that the certificate should be null and void. The court had not annexed any qualification to its rule respecting possession, and no exception on that ground was incorporated in the statute. Some statutes of limitation fix limits for the commencement of actions for the possession of real estate, and one who is in possession is not subject to such limitation because he could not bring an action and already has what would be gained by a suit for possession. An argument that such a statute does not apply to one in possession is without force in the construction of a statute like this one. The effect of possession as notice, or as relating to the doctrine of *laches* in courts of equity, has no relation whatever to the question.

There is nothing, in principle, in this statute or this case differing from any other statute of limitations or any case where substantial rights are lost under such a statute. When the complainant pur-

chased the lands she was engaged in enforcing the remedies given to her by the law. The statute under which she purchased provided exactly what her purchase should be, what she should obtain by it, within what time she would be entitled to receive the title, and after what time the certificate of purchase would become null and void and all her rights under the purchase would cease.
97 The statute gave her a right to receive the amount of her bid, with interest in case of redemption, and in case there was no redemption, to receive a deed within five years after the expiration of the period of redemption, and declared that if she did not take out the deed within that time the certificate should be null and void. If she failed to observe the requirements of the statute the fault is solely hers, against which equity is powerless to relieve her. The statute does not transfer any right or title granted by the certificate of purchase or divest complainant of it, but it fixes, in definite terms, what she purchased. The ultimate effect of statutes of limitation, generally, is to extinguish rights, and the courts have not hesitated to enforce such statutes where the effect is to transfer title from the true owner. When the bar of the statute has become absolute it is just as available for attack as for defense, and in case of disseizin by the paramount owner the title acquired by the bar may be asserted against him. One having no other title to land except under a statute of limitations may maintain his action against the one who has lost title by the same statute. McDuffee *v.* Sinnott, 119 Ill., 449; Faloon *v.* Simshauser, 130 *id.*, 649; Illinois Central Railroad Co. *v.* Moore, 160 *id.*, 9.

Under the first of the propositions of counsel above stated, they insist that complainant is a mortgagee in possession,—and if that were so it would be a good defense at law. They say that, inasmuch as the trustee, Johnson, held title for her benefit and she entered into possession, although her certificate of purchase became null and void and the rights given to her as a purchaser ceased, her former status as a mortgagee in possession remains, and she is entitled to be considered in a court of equity as an equitable mortgagee in possession. The bill alleges, in a general way, that she took possession of the lands in 1871 and filed her bill to the March term, 1872, but alleges as a fact that while the bill was pending, in the summer of 1872, she personally entered on the lands and took possession and put an agent in charge of them. The bill is to be construed most strongly against the pleader, and it shows that she took actual possession after she had filed the bill. But that question is immaterial in this controversy. She had the right of a mortgagee to the possession of the lands under the trustee and could have recovered such possession in his name
98 for her benefit, but such right to possession ended when the land was freed from the lien of the trust deed. The title in the trustee was only for the purpose of obtaining satisfaction of the notes out of the lands. (Lightcap *v.* Bradley, 186 Ill. 510; Ware *v.* Schintz, 190 *id.* 189.) After condition broken she might pursue all the different remedies allowed by the law until satisfaction was

obtained by one or the other, but when a decree of foreclosure was entered and the land was sold, the security had been appropriated towards the satisfaction of the debt and all her rights in the land merged in the decree and sale. (State Bank *v.* Wilson, 4 Gilm. 57; Wayman *v.* Crozier, 35 *id.* 156; Seligman *v.* Laubheimer, 58 *id.* 124; Kelgour *v.* Wood, 64 *id.* 345; United States Mortgage Co. *v.* Gross, 93 *id.* 483; Ogle *v.* Koerner, 140 *id.* 170; Davis *v.* Dale, 150 *id.* 239; Walker *v.* Warner, 179 *id.* 16; Lightcap *v.* Bradley, 186 *id.* 510.) After the sale the trustee had no title, and nothing remained of the indebtedness except the personal liability of McCune. The title that the trustee had was only for the purpose of enforcing the provisions of the trust deed, and that having been done by the court, his powers, rights and duties were at an end. It is true, that during the period of redemption the court might have appointed a receiver to hold possession and apply the rents and profits on the deficit; but that is an equitable remedy in the nature of an equitable execution, and it was not done. If a foreclosure sale ripens into title it relates back to the execution of the mortgage and conveys all the title which the mortgagor then had, so as to cut off all subsequent encumbrances. But when the decree was entered and sale made the trust deed had expended its force. In Smith *v.* Smith, 32 Ill. 198, the court said (p. 202): "If the party elected to sell under the power or to foreclose in chancery, he could only sell or foreclose for the amount then due according to the terms of the mortgage; and this, of necessity, would be a release of the security for the amount not due." In Rains *v.* Mann, 68 Ill. 264, it was held that a foreclosure for a part of a debt released the lien of the mortgage for the balance. If Prettyman or a judgment creditor had redeemed, he would have held the title to the land discharged of the trust deed and all claims of the complainant, although there was an unpaid balance due from McCune. The existence of such an unpaid balance did not give any right to enforce the mortgage lien against the same property a second time. If another person than the complainant had purchased at the sale and obtained possession we apprehend that no one would say that he was a mortgagee in possession, and it cannot be different merely because she was the purchaser. The sale created a new relation, in no manner affected by the fact that complainant had been the party secured by the trust deed, but dependent upon the statute, which permitted any person to become the purchaser and admitted all as bidders on terms of absolute equality.

99

The second proposition is, that the complainant has equitable title to the premises through the trust deed, the sale and the expiration of the period of redemption, which gave her a right to a master's deed. It is argued that after the expiration of fifteen months the right of redemption of Prettyman and his creditors was gone, and that right being barred he had no title, but that the complainant is the equitable owner, although the certificate became null and void. If the title of Prettyman passed out of him at the expiration of the period of redemption it must have gone somewhere. It was not

in nubibus, and it did not go to the complainant or any other person The certificate of purchase conveyed no title to the complainant. Johnson *v.* Baker, 38 Ill. 98; Rockwell *v.* Servant, 63 *id.* 424; Huftalin *v.* Misner, 70 *id.* 55; Hays *v.* Cassell, *id.* 669.

In Whiting *v.* Butler, 29 Mich. 122, the four justices were divided in opinion and the judgment was affirmed under the statute. Three opinions were delivered by different justices, and Mr. Justice Christiancy concurred in the opinion delivered by Mr. Justice Cooley. There was a sale on execution of an interest in certain lands and a subsequent sale of the same interest on another execution. Those justices were of the opinion that the title under the second sale was paramount, and that while it was true that the execution debtor's title after the expiration of the period of redemption would have been a mere legal title, with the whole equitable right in the purchaser, such title did not terminate with the failure to redeem, but would continue, either at the will or through the mere inaction of the purchaser at the sale, indefinitely; that the owner had something very much beyond the mere right to redeem; that he had the legal title, and might sell and convey it, mortgage and lease the premises and defend his possession, and those rights would not be forfeited or lost by failure to redeem, and that the purchaser's right to the premises would only be perfected so as to divest the legal title and enable the purchaser to demand possession when the sale should be carried into effect by the execution of a deed.

The title must remain in the original owner until it passes out of him by the execution of a deed; and this is a title for all beneficial purposes. The complainant had no right to the possession, the beneficial use or the rents and profits, as purchaser or by virtue of the certificate, and the court would have had no power to award possession to her. (Bennett *v.* Matson, 41 Ill. 332; Myers *v.* Manny, 63 *id.* 211.) In Cochran *v.* Fogler, 116 Ill. 194, it was held that a purchaser was not entitled to possession until he had obtained a master's deed and complied with the terms of the decree by producing the deed and a certified copy of the order confirming the sale, and before that he could not call upon the mortgagor to surrender possession. The complainant's decree, under which she purchased, (a copy of which is annexed to the bill,) provided for the execution of a deed to the purchaser in the usual way, and that upon the execution and delivery of the master's deed the purchaser should be let into the possession of the premises conveyed to him, and that upon the production of the master's deed of conveyance and a certified copy of the order of the court confirming the sale, the person in possession should surrender the possession thereof to the grantee. Complainant had no right to the possession after the sale by virtue of the law, and her bill alleges none by virtue of any agreement. It is true, as was said in Whiting *v.* Butler, *supra*, that one who is entitled to a deed of premises has an equitable right in them; but that equitable right arises out of the fact that such person is entitled to the deed. In Wright *v.* Douglass, 2 N. Y. 373, the in-

terest of a purchaser at execution sale was levied on by writ of attachment. There was a judgment in the attachment suit and a sale and a deed was executed, and it was held that the purchaser at the execution sale had an interest in the premises, and that the sale on attachment was at least equivalent to the assignment of the certificate. A sheriff's deed was executed under the execution sale, and the interest, legal and equitable, of the purchaser at that sale was bound by the attachment. In Ketchum *v.* Schicketanz, 73 Ind.
101 137, the rights of a wife were involved. In Indiana a surviving wife is entitled to one-third of all lands in which her husband had any equitable interest at the time of his death, and the inchoate interest vests absolutely in her when such lands are sold and conveyed away from him under some judicial proceeding, the same as at his death. Marie Schicketanz was the wife of Jacob Schicketanz, and he had a certificate of purchase under a decree of foreclosure. He assigned it to his son, George, in fraud of creditors and of the bankrupt act, and George obtained the deed. Jacob being adjudged a bankrupt, the assignment to the son was set aside and a conveyance to the assignee in bankruptcy was ordered. It was held that in legal contemplation the lots conveyed were a part of Jacob's estate, and that the conveyance to the assignee in bankruptcy was under a judicial proceeding, so that one-third vested in the wife. In these cases the party who was held to have an interest in the lands was entitled to a deed, and the deed was executed. After the expiration of the period allowed for redemption the complainant in this case became entitled to a deed, and that right continued for five years, during which time she might have obtained a deed, but when that time expired and her certificate of purchase became null and void, the only ground for holding that she had equitable title to the premises ceased to exist.

This court has repeatedly held that the holder of a certificate of purchase barred by the statute has no interest, either at law or in equity. It was so held in Peterson *v.* Emerson, *supra;* and in Seeberger *v.* Weinberg, 151 Ill. 369, where a certificate of purchase had become void under the statute, it was held that the holder had no remedy which he could assert upon the certificate, as that had become a nullity, and he could not enforce any remedy on the original mortgage, as that remedy had been completely exhausted by the foreclosure and sale. The court said (p. 380): "Whether the lapse of time is to be given the effect of extinguishing his right or of merely barring his remedy, he has no further title or interest in the premises described in the certificate, which either he or his grantee can enforce, either at law or in equity." Brown *v.* Ridenhower, 161 Ill. 239, was a case like this, where the complainants, holding under a regular series of conveyances from the pur-
102 chaser at a special commissioner's sale under a decree of foreclosure, were in possession and filed their bill to set aside as clouds upon their title the deeds made by heirs of the original mortgagor. It was held that the complainants had no interest in the premises which could be enforced in equity,

There is no pretense that complainant is entitled to the legal title or to a conveyance of it, but the claim is that two estates are to run along, side by side, permanently in this land, the legal title in the defendant and the equitable title in the complainant. We have been referred to no authority which holds that in the absence of an express active trust the two estates can be permanently separated in that way. In the case of express passive trusts the use is executed by the statute and the legal title transferred to the person who has the beneficial estate, and the general rule is, that wherever one has an equitable estate and there is no active trust he is entitled to a transfer to him of the legal estate. In this case there is no trust, expressed or implied, resulting or constructive. Defendant's title is a perfectly valid, legal title and not a mere cloud to be canceled and removed. It has not become void, but the certificate of purchase under which complainant claims is void. Complainant has no title to the premises under her purchase and the bill shows no right to possession, and we do not see how it can be said she has an equitable estate in the land.

There is nothing alleged in the bill which amounts to an equitable estoppel. All that is alleged is silence on the part of Prettyman and no representation of a falsehood. Where silence is the ground of estoppel, it is essential that the party estopped shall have knowledge of the facts and the other party be ignorant of the truth, and be misled into doing that which he would not have done except for such silence. Complainant took no deed and is chargeable with knowledge of that fact, and there is no allegation that Prettyman knew it. She had the means of ascertaining Prettyman's title by reference to the public record, and the facts alleged do not create an estoppel. Thor *v.* Oleson, 125 Ill. 365; Mullaney *v.* Duffy, 145 *id.* 559; Holcomb *v.* Boynton, 151 *id.* 294.

The decree of the circuit court is affirmed.

Decree affirmed.

Mr. Justice HAND, dissenting:

103 This was a bill in chancery filed in the circuit court of Fulton county by the appellant, against the appellee, to enjoin the prosecution of an ejectment suit pending in that court for the recovery of 680 acres of farming land, located in Mason county. The ejectment suit was originally commenced in Mason county and on change of venue was transferred to Fulton county, where, upon a trial before the court, a jury having been waived, there was a finding and judgment in favor of the defendant. The plaintiff prosecuted an appeal to this court, and the judgment was reversed and the cause remanded, and on a re-trial in the circuit court a judgment was rendered against the defendant, and a new trial was taken by her under the statute, and she then filed this bill. A demurrer having been sustained thereto, and she having elected to stand by her bill, the same was dismissed for want of equity, and she has brought the same direct to this court by appeal, on the

ground that a freehold and the constitutionality of a statute are involved.

The bill avers that on June 30, 1867, the appellant was the owner of a mortgage given by Thomas B. Breedlove to secure the payment of the sum of $19,616 on 1200 acres of land situated in Mason county, of which the land in question was a part; that after that date Thomas B. Breedlove conveyed all of said premises, subject to said mortgage, to Benjamin S. Prettyman; that on August 13, 1868, Benjamin S. Prettyman conveyed 680 acres of the premises covered by said mortgage, being the premises in controversy, to Absalom McCune; that on the same day Absalom McCune executed to E. G. Johnson, as trustee, a trust deed upon said 680 acres to secure the payment of his three promissory notes, for the sum of $5000 each, due and payable to the order of the appellant in one, two and three years from date, with interest at ten per cent. per annum; that Benjamin S. Prettyman delivered said promissory notes to the appellant in part payment of the Breedlove mortgage and paid to her the balance thereof in cash, and she thereupon released the mortgage; that on November 13, 1868, Absalom McCune re-conveyed said 680 acres to Benjamin S. Prettyman; that at the time the appellant accepted the McCune notes and released the
104 Breedlove mortgage, Benjamin S. Prettyman represented to her that the 680 acres of the 1200 acres upon which she retained a lien was good farming land and much more valuable than the land she released, and that Absalom McCune was financially responsible; that she was not acquainted with the financial responsibility of McCune and had never seen the land, but relied upon the statement of Benjamin S. Prettyman with reference thereto; that in 1871, the interest upon the McCune notes not having been paid and the land having been sold for taxes, she discovered, upon investigation, that the 680 acres upon which she had retained a lien for the unpaid balance of the Breedlove mortgage was a swamp and of little value; that the 520 acres which she had released was valuable farming land; that McCune was not financially responsible and had left the State, and that the land was vacant and unproductive; that she thereupon, through her agent, entered into possession of the 680 acres as mortgagee, redeemed the same from the tax sales and paid up the back taxes thereon, and filed a bill in chancery in the circuit court of Mason county to set aside the release of the Breedlove mortgage on the ground of fraud and to foreclose the same, and subject to the payment of her debt the 1200 acres of land covered by it; that after protracted litigation she was defeated in her efforts to set aside the release of the Breedlove mortgage; that at the August term, 1879, of the Mason county circuit court, in the suit commenced to set aside the release and foreclose the Breedlove mortgage, a decree was entered foreclosing the Johnson trust deed, and a sale of the 680 acres covered thereby was ordered to satisfy the McCune notes, which then amounted to $31,500; that said 680 acres were sold by the master in chancery, under the decree, to the appellant on October 27, 1879, for $10,000, and the

master executed to her a certificate of purchase, as provided by the decree; that the master reported the sale to the court, and his report was approved and the sale confirmed on November 23, 1879: that appellant had been in the continuous possession of the premises from the year 1871 up to the time of the filing of the bill, and had paid all taxes assessed thereon during that time: that she had expended, with the knowledge of the appellee and Prettyman, a large amount of money in erecting fences, barns and dwelling houses,
105 the premises now being divided into three farms with substantial improvements upon each; that she had constructed drains and ditches upon the land, and re-claimed it from overflow, at great expense to her; that at the time she took possession of the land, in 1871, and at the time of the master's sale, the entire tract was not worth to exceed $6800 and that the same is now worth not less than $40,000, and that said increased value is due to the expenditure of money thereon by the appellant in draining and reclaiming said land and from the improvements placed thereon by appellant; that no redemption from the master's sale, upon the foreclosure of the Johnson trust deed, was ever made, and that the appellant never surrendered her certificate of purchase and took out a master's deed; that the trustee, E. G. Johnson, died intestate in 1885; that in 1894 the appellant applied to his widow and heirs to sell the premises under the power conferred on the trustee by the trust deed; that the premises were sold by them and the appellant bid therefor $35,000, and on June 11, 1894, they executed to her a quit-claim deed, reciting the trust deed and the sale made by them, which deed purported, upon its face, to convey to the appellant all the title of Absalom McCune in said 680 acres which he had at the time of the execution of the trust deed and the title thereby conveyed by him to said trustee.

In the ejectment suit the plaintiff claimed title in fee simple to the 680 acres, and the defendant filed the plea of not guilty. The fee title was admitted to be in Benjamin S. Prettyman on October 8, 1867, and the plaintiff, to maintain title in himself, introduced a deed for said lands from Prettyman and wife, dated August 13, 1868, to Absalom McCune; a deed from Absalom McCune and wife to Benjamin S. Prettyman, dated November 30, 1868, and a deed from Benjamin S. Prettyman to the plaintiff, dated September 4, 1893, all of which were duly acknowledged and recorded, the consideration in the deed from Benjamin S. Prettyman to plaintiff being $1000, and the defendant, to maintain title in herself, introduced in evidence the trust deed from Absalom McCune to E. G. Johnson, dated August 13, 1868, and in addition thereto relied upon the facts above set forth, except the evidence then showed her possession to date from about the year 1880, instead of 1871, as is averred in the
106 bill. It is averred that the appellant cannot produce any other or further testimony upon the trial of the ejectment suit when it shall be tried, to show title in herself.

This court, when the ejectment suit was here on appeal, held that

the legal title to the premises was in the plaintiff. The opinion filed in that case is reported as Lightcap *v.* Bradley, 186 Ill. 510.

The trust deed from Absalom McCune to E. G. Johnson was executed on August 13, 1868, and the legislature, on March 22, 1872, passed an act entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree," which went into effect July 1, 1872, section 30 of which reads as follows: "When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor at any time within five years from the expiration of the time of redemption. The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the purpose. If the time of redemption shall have elapsed before the taking effect of this act, a deed may be given within two years from the time this act shall take effect. When such deed is not taken within the time limited by this act the certificate of purchase shall be null and void, but if such deed is wrongfully withheld by the officer whose duty it is to execute the same, or if the execution of such deed is restrained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof restrained shall not be taken as any part of the five years within which said holder shall take a deed." (2 Starr & Cur. Stat.—2d ed.—p. 2367.)

The appellant having failed to take out a deed on the sale to her under the foreclosure decree within five years from the expiration of the period of redemption, the certificate of purchase held by her became null and void; and the legal title to the premises never vested in her but remained in the appellee's grantor, and the question presented here for decision is,—the appellant being in possession claiming to be the equitable owner of the premises by virtue of the foreclosure and sale under the Johnson trust deed,
107 which sale was confirmed,—has she such an equitable interest in the premises, after the expiration of six years and three months from the date of sale, that a court of chancery will restrain, by injunction, appellee from disturbing her possession by ejectment or other proceedings at law?

The relation of the appellee's grantor and appellant to each other prior to the confirmation of the foreclosure sale was in the nature of that of mortgagor and mortgagee, and as against the grantor of appellee, Johnson, as trustee, held the fee title to the premises in controversy for the benefit of the appellant. He held the title, however, only for the purpose of securing the payment of the indebtedness due the appellant, and when that was paid or otherwise satisfied his title became extinguished by operation of law.

In Ware *v.* Schintz, 190 Ill. 189, which was an action of ejectment by the trustee in a trust deed, for the use of the holder of the indebtedness, to obtain possession as against the maker of the trust deed, on page 193 it was said: "The relation of plaintiff and defendant to

each other is that of mortgagor and mortgagee, and under the repeated rulings of this court a mortgagee, as against the mortgagor, is held, as in England, in law, to be the owner of the fee, having the *jus in re* as well as *ad rem*, and entitled to all the rights and remedies which the law gives to such owner, and may, after condition broken, maintain ejectment against the mortgagor. The mortgagor or his assignee, however, is the legal owner of the mortgaged estate as against all persons excepting the mortgagee or his assigns. (Delahay *v.* Clement, 3 Scam. 201; Vansant *v.* Allmon, 23 Ill. 26; Carroll *v.* Ballance, 26 *id.* 9; Oldham *v.* Pfleger, 84 *id.* 102; Fountain *v.* Bookstaver, 141 *id.* 461; Esker *v.* Heffernan, 159 *id.* 38.) The fee title held by the mortgagee is in the nature of a base or determinable fee. The term of its existence is measured by that of the mortgage debt. When the latter is paid or becomes barred by the statute of limitations the mortgagee's title is extinguished by operation of law. (Pollock *v.* Maison, 41 Ill. 516; Harris *v.* Mills, 28 *id.* 44; Gibson *v.* Rees, 50 *id.* 383; Barrett *v.* Hinckley, 124 *id.* 32; Lightcap *v.* Bradley, 186 *id.* 510.) Until it is extinguished the legal title is in the mortgagee for the purpose of obtaining satisfaction of his debt."

108 When the indebtedness secured by the trust deed became due, there were open to the appellant several remedies to enforce the payment of her debt: she could bring assumpsit upon the notes, put herself in possession of the land after condition broken, by ejectment, if necessary, that the rents and profits might be applied to the payment of her debt, or file a bill for foreclosure and sale, and under special circumstances she might have proceeded by *scire facias* or for a strict foreclosure. These remedies were cumulative, and either or all of them might have been pursued at the same time, until her debt was satisfied. (Vansant *v.* Allmon, 23 Ill. 26; Rogers *v.* Meyers, 68 *id.* 92; Harper *v.* Ely, 70 *id.* 581.) In Vansant *v.* Allmon, *supra*, on page 30 it was said: "A creditor by note and mortgage has several remedies, either and all of which he may pursue until his debt is satisfied. He may bring his action upon the note, or put himself in possession of the rents and profits by an ejectment after condition broken, or, if the mortgage be recorded, proceed by *scire facias* on the record and obtain a judgment to sell the land; or he may file his bill in chancery for a strict foreclosure of the equity of redemption, which courts will allow under a proper state of circumstances, or file a bill for foreclosure and sale, which is the usual practice in this State."

The appellant entered into possession of the land with a view to apply the rents and profits in payment of her debt, and at the same time proceeded in equity to foreclose the trust deed and sell the land. While she might thus proceed she could have but one satisfaction, and when a decree of foreclosure and sale was entered and the land was sold and the sale confirmed, the mortgage was exhausted and all the rights of appellant in the land merged in the decree and sale. State Bank *v.* Wilson, 4 Gilm. 57; Wayman *v.* Crozier, 35 Ill. 156; Seligman *v.* Laubheimer, 58 *id.* 124; Kelgour *v.* Wood, 64 *id.* 345;

United States Mortgage Co. *v.* Gross, 93 *id.* 483; Ogle *v.* Koerner, 140 *id.* 170; Davis *v.* Dale, 150 *id.* 239; Walker *v.* Warner, 179 *id.* 16.

In the ejectment case (Lightcap *v.* Bradley) the foregoing authorities were reviewed, and on page 524 it was said: "A decree was entered in pursuance of the prayer of her bill, ordering a sale of the premises, which was duly made and she became the purchaser. Having made her election and secured a valid sale of the property she must abide by it. (State Bank *v.* Wilson, 4 Gilm. 57.)
109 The cause of action was merged in that foreclosure and sale, and all the rights and liabilities growing out of the trust deed were transferred to the decree. When a mortgage is foreclosed by suit the decree of the court becomes the basis of title. (United States Mortgage Co. *v.* Gross, *supra.*) By the decree and the execution thereof, the legal liability was transferred to the decree. The debt was merged in the decree, and the rights and liabilities growing out of the trust deed were fixed by such decree and to be enforced through its provisions. (Wayman *v.* Cochrane, 35 Ill. 151.)

"It is insisted by counsel that the title conveyed to Johnson could not merge in the decree; and perhaps the doctrine of merger does not strictly apply, but the title which Johnson had was only available for the collection of the notes, and they were merged in the decree. The defendant had asked and obtained a decree for the enforcement of her rights in another manner and by another means. Whether the doctrine of merger applies or not, the sale of the premises under the decree exhausted all the rights and remedies under the trust deed, and the title which had been in the trustee was sold by the court. (Kelgour *v.* Wood, 64 Ill. 345; Walker *v.* Warner, 179 *id.* 16.) In Seligman *v.* Laubheimer, 58 Ill. 124, the court said (p. 126): 'Without determining the legal effect of the mere foreclosure, we do hold that the decree, followed by a sale of the premises, the purchase, and the subsequent acts of the first mortgagee, extinguished his mortgage lien. * * * Plaintiff in error obtained his decree, caused a sale, became the purchaser, received his certificate of purchase, and then procured an award for a special execution to make the residue of his debt. By these acts the mortgage lien was extinguished. The intention to merge the lien is clearly deducible from them.' In Ogle *v.* Koerner, 140 Ill. 170, the court said (p. 179): 'A mortgage, or, as in this case, a deed of trust in the nature of a mortgage, vests in the party secured a lien upon the mortgaged premises. By virtue of that lien the mortgagee is entitled to have the mortgaged property sold under a decree of foreclosure and the proceeds of the sale applied to the payment of the debt secured. This is the mode provided by law for the enforcement of the lien, and when the lien has been once enforced by the sale of the property, it has, as to such property, expended its force and accomplished its purpose and
110 the property is no longer subject to it.' In Davis *v.* Dale, 150 Ill. 239, the law was again stated as follows (p. 243): 'By virtue of the lien created, the mortgagee or *cestui que trust* had the right to have the security foreclosed and the property sold and the

proceeds applied in payment of the secured debt. But when this has been done, and the lien enforced by a sale of the property and the proceeds applied, the mortgage or trust deed has expended its force and the property is no longer subject to its provisions. (Ogle *v.* Koerner, 140 Ill. 170; Seligman *v.* Laubheimer, 58 *id.* 124.) Nor does it in any way affect the result that the holder of the secured indebtedness becomes the purchaser at the sale, whether he be the mortgagee or *cestui que trust* or not. By becoming the purchaser a new relation created by the statute exists, in nowise dependent upon any privity of contract between the purchaser and mortgagor.'"

From a consideration of the authorities the conclusion is irresistible that the foreclosure and sale divested the appellant of all the rights which she had in the premises under the trust deed, and that after the confirmation of the sale she had no right to hold the premises longer, as mortgagee or *cestui que trust* in possession, without the consent of the grantor of appellee or through a receiver, as the debt, as an incident to the trust deed, was satisfied and discharged, and the land being released from the lien created by the trust deed, the right to retain the possession thereof for the purpose of satisfying the mortgage debt was gone. The confirmation of the sale, however, created a new relation, and from that time until the equity of redemption expired the only rights of the appellant, growing out of the foreclosure and sale, were to have returned to her the amount of her bid, with interest, in case the premises should be redeemed from the sale, or in case no redemption should be made, to receive a deed of the land at the expiration of fifteen months from the date of sale, and to apply the rents and profits of the land during that period, by the consent of the maker of the trust deed or through a receiver, to the payment of the amount of the decree remaining unpaid after the application thereon of the amount of her bid, while during that time the grantor of appellee had the right to retain the possession of the premises and enjoy the use thereof, and to redeem from the foreclosure sale,
111 and in case of a redemption the title would have been in him freed from the debt. During the fifteen months allowed for redemption the appellant had only a lien upon the premises for the amount of her bid, with the inchoate right to a deed in case a redemption of the land from the sale did not take place, while the grantor of appellee was the owner of the land subject to the lien and had the right to redeem. So soon, however, as the right of redemption had expired the appellant became the equitable owner of the land with the right to take a deed, which would have invested her with the full title to the land, both equitable and legal, and the grantor of appellee had left remaining in him only the naked legal title to the land, which could have been divested by the appellant at any moment and without any act being performed by the grantor of appellee. All that was then necessary to complete her full title and ownership was the execution to her of a deed by the master. The master had no legal or beneficial interest in the land. He was simply a conduit through which, by virtue of a deed, the legal title

would pass from the grantor of appellee to the appellant. As the grantor of appellee at that time had only the legal title, all the equitable interest in the land was in appellant, and upon uniting the legal title and equitable interest in her by a master's deed, her title would have been consummated and become complete.

In Stephens *v.* Illinois Mutual Ins. Co. 43 Ill. 327, the court had under consideration the question whether or not the mortgagor had an insurable interest in the mortgaged property after foreclosure and sale during the time allowed for redemption, and it was said (p. 331): "At the time of the fire, then, the position of Stephens was substantially that of a mortgagor, with a right to redeem. * * * That in this position he would have had a substantial, insurable interest does not admit of doubt. His estate, as mortgagor, would not have been lost until the expiration of his right to redeem. In this State the purchaser under a sheriff's sale upon judgment and execution, or at a master's sale on foreclosure of a mortgage, acquires by his purchase no new title to the premises until the period of redemption has passed and he is entitled to a deed. His deed will relate back, it is true, to the beginning of his lien in order to cut off intervening encumbrances, but it will not carry back the absolute divestiture of title, as is evident from
112 the fact that neither judgment debtor nor mortgagor can be called to account for rents and profits. His title becomes absolute only when his right to a deed accrues. If it is a sale under a decree of foreclosure, the mortgagor still has the estate of a mortgagor, with this qualification: that the amount and time of redemption have become absolutely fixed by the decree and sale, and his estate will be absolutely divested if he fails to redeem within the allotted time."

The case of Whiting *v.* Butler, 29 Mich. 122, is very instructive upon the questions of the respective rights of the judgment debtor and purchaser in premises sold upon execution after the term of redemption has expired. Opinions were filed by four different members of the court. Mr. Justice Cooley on page 129 says: "After Drury had become entitled to a sheriff's deed, Campau's title would have been a mere legal title with the whole equitable right in Drury." And Mr. Justice Campbell on page 143 said: "The Drury title became an indefeasible right as soon as the statutory period of fifteen months expired. * * * The interest which Drury obtained by his execution sale was a vested and valuable interest. * * * Though not the legal estate, it was an equitable estate."

Jones, in his work on Mortgages, (vol. 2, sec. 1661,) in speaking of the rights of parties after sale, says: "The mortgagor still has the estate of a mortgagor, with this qualification: that the amount and time of redemption have become absolutely fixed by the decree of sale, and his estate will be absolutely divested if he fails to redeem within the allotted time."

In Ketchum *v.* Schicketanz, 73 Ind. 137, it was held that with the expiration of the time allotted for redemption the holder of a sheriff's certificate for land sold on execution or decretal order acquires an

equitable estate in the land, of which one-third will pass to the wife upon the bankruptcy of the husband under the statute of that State, which provides that the surviving wife shall have a one-third interest in all the lands in which the husband had an equitable interest at the time of his death, and that her inchoate interest in his lands shall vest absolutely where the same are conveyed away from him, under judicial proceedings.

In Wright *v.* Douglass, 2 N. Y. 373, it was held the interest of a purchaser at an execution sale after the time of redemption had expired becomes an estate subject to sale upon attachment.

113 It seems clear that the equitable estate in said lands vested in the appellant immediately upon the expiration of the time allowed for redemption, the naked legal title thereof being in the grantor of appellee. On this title he could maintain ejectment against the appellant, and in case she brought ejectment against him he could defeat her. She, however, at the time his equity of redemption expired, and for many years prior thereto, had been in possession of the land. Whether that possession, during the period of redemption, was so far acquiesced in by the grantor of the appellee as to have made it lawful need not be considered, although at this distant time her possession with his consent might be presumed, but after that period had expired in equity it is clear she was entitled to possession. At least, she being the equitable owner of the estate and in possession, it was not inequitable that she should retain possession as against Prettyman or his grantee, who only had the naked legal title. As was said in Whiting *v.* Butler, *supra* (p. 139): "His right to a deed had become complete and vested. All he lacked of a legal title to the land, superior and paramount, was the legal evidence such a deed would afford, and his right to this evidence or muniment was not contingent,—not dependent upon the will or discretion of any one. It was so complete that it was not necessary for him to resort to equity to obtain it if withheld. The right to it was so plainly and exclusively fixed and legal as to be cognizable at law and enforceable by *mandamus*,"—and in this State the appellant could have obtained the relief by motion. People *v.* Bowman, 181 Ill. 421.

Under the repeated decisions of this court it is clear that, by virtue of the terms of the statute above referred to, upon the failure of the appellant to take out a deed within the time fixed therein, the certificate of purchase issued to her became null and void and that no right could be predicated thereon by her. (Ryhiner *v.* Frank, 105 Ill. 326; Peterson *v.* Emmerson, 135 *id.* 55; Belleville Savings Bank *v.* Reis, 136 *id.* 242; Seeberger *v.* Weinberg, 151 *id.* 369; Brown *v.* Ridenhower, 161 *id.* 239.) The appellant, however, is not claiming any right here by virtue of the certificate of purchase, but being the equitable owner of the premises by virtue of the decree of foreclosure, the sale and the decree confirming the sale, and being in possession of the premises, the question is, should a court of equity permit her to be turned out of possession

114 by one who has only the mere naked legal title to the land? The statute requiring a deed to be taken out within five years

from the expiration of the period of redemption is a limitation law, and nothing more, and as a limitation law it is undoubtedly constitutional and valid. (Ryhiner *v.* Frank, *supra.*) The same rules of construction must therefore be applied to this statute that the courts have heretofore applied to statutes of limitation in general, and the law is well settled in this State that statutes of limitation do not run against a party while in possession of land. (Mills *v.* Lockwood, 42 Ill. 111; Wilson *v.* Byers, 77 *id.* 76; Parker *v.* Shannon, 137 *id.* 376.) In Parker *v.* Shannon, *supra*, the court said (p. 392): "A statute of limitations or rule of limitation in equity does not run against 'a possessor of real estate, but it runs against him who is out of possession.' (Mills *v.* Lockwood, 42 Ill. 111.) 'The possession is notice to all, of the possessor's equitable rights, and he need to assert them only when he may find occasion to do so.'" To hold that said statute has the effect to divest the appellant of her equitable estate, she being in possession, and to invest the appellee with that estate, he being out of possession, would render it more than a limitation law and make it obnoxious to both the State and Federal authorities.

It would seem, therefore, that while the right to a master's deed had been swept away by the statute, the statute had no effect upon the equitable interest of the appellant, accompanied, as it was, by her possession; that the statute did not operate upon the interest here asserted by reason of her possession, and that it is beside the case to say that the statute has barred her right to a deed. The equitable estate of appellant in the land after the period of redemption had expired, arose, not out of the certificate of purchase, which amounted to no more than evidence of her bid and when the period of redemption would expire, but by reason of her bid, the application thereof upon the decree, and the fact that the appellee failed to redeem, and her possession.

It is, however, contended that this court is committed by numerous decisions to a view contrary to the view herein expressed. We think, upon a careful analysis of the decisions relied upon, it will be found that none of them are inconsistent with what is here said, and that no case can be found in our reports where the precise question presented here has been passed upon. In Ryhiner *v.* Frank, *supra*, the plaintiff brought ejectment to recover certain lots in Effingham, and as one source of his title relied upon a judgment rendered March 6, 1871, against their then owner, an execution sale of the lots on August 7, 1871, under the judgment, and
115 a sheriff's deed of them dated December 21, 1878, to him, as assignee of the certificate of purchase. The court held section 30 of the statute heretofore referred to, one of limitation, and valid, and as the sheriff's deed had not been taken out within the time limited by the statute, the certificate of purchase, on which the deed was given, had become null and void, and that the deed was of no effect. The case differs from the case at bar in that it was ejectment, where only legal titles are considered, and the purchaser was out of possession.

In Peterson *v.* Emmerson, *supra*, it appeared that a decree was

entered in 1871, to foreclose a mortgage (executed in 1865) upon forty acres of land. On November 25, 1871, the master sold the land to the complainant and issued to her a certificate of purchase. In 1872 she took possession of the premises and received the rents and paid the taxes, but failed to take out a master's deed until more than five years had elapsed after the period of redemption had expired. She afterwards filed a bill against the master and the heirs of the mortgagor, to procure a decree requiring the master to execute a deed to her of the land. The chancellor so decreed, but on appeal this court held that section 30 was a limitation law, and that as it affected only the remedy, it applied to the master's sale made prior to its passage, and under the ruling made in Ryhiner *v.* Frank, *supra*, more than five years having elapsed after the period of redemption had expired and no deed having been taken out, the certificate of purchase was null and void, and that the master was powerless then to issue a deed, and that the court had no power to direct him so to do. While the question here presented was not presented there, the court did incidentally consider the question, and while it was not expressly passed upon, Mr. Justice Baker, who wrote the opinion, used the following language with reference thereto (p. 60): "It does not alter the case that defendant in error has been in actual possession of the land since 1872, claiming ownership, and has paid all the taxes assessed thereon. Such acts do not so take the case out of the statute as to justify the transfer to her of the legal title vested in the heirs of the mortgagor. If she has gained any rights by virtue of such possession, claim of ownership and payment of taxes, the courts will, doubtless, if called upon, protect her therein; but surely the existence of such rights, if any there be, does not
116 afford just and equitable grounds for transferring to her a legal title to which she is not entitled under the law of the land." In that case the relief sought was the transfer of the legal title to the complainant, while here the relief sought is the protection of the appellant's equitable interest from the assault made against her possession by the holder of the legal title, by ejectment.

In Seeberger *v.* Weinberg, *supra*, Seeberger was the owner of three notes secured by a trust deed upon certain lots located in Chicago. Default having been made, the trust deed was foreclosed and the lots sold to him on February 14, 1876, and a certificate of purchase was issued to him. No redemption took place and no master's deed was ever issued. The property was vacant, and on June 22, 1892, the widow and heirs of the grantor in the trust deed conveyed the premises to William Kornell, who immediately conveyed the same to Fannie Weinberg, who took possession and gave a trust deed thereon to secure the sum of $6000, which she had borrowed from the Bank of Commerce of Chicago with which to improve the property. On September 17, 1892, Seeberger filed a bill, making Fannie Weinberg and husband, Hermann Felsenthal, as trustee, and Jacob Gross, his successor in trust, and the Bank of Commerce, defendants, and prayed for a decree requiring Fannie Weinberg and her hus-

band to execute and deliver to him a deed conveying to him the property, that his title to the lots be confirmed and that the trust deed be canceled and released of record. The court reiterated the doctrine that a deed not having been taken out within five years after the period of redemption expired, the certificate of purchase was null and void, and held that the bill could not be maintained. In that case the property remained vacant until it was taken possession of by the remote grantees of the widow and heirs of the grantor in the trust deed, and while in possession Fannie Weinberg mortgaged the property to the bank. At the time Seeberger filed his bill he was out of possession, while here the appellant has been in possession since 1871, and was in possession at the time the appellee obtained the legal title from Prettyman, and by reason of such possession had notice of all the equitable rights of the appellant.

In Brown *v.* Ridenhower, *supra*, the bill was filed by the grantee of the purchaser at a foreclosure sale, where no deed had
117 been taken out and where more than five years had elapsed subsequent to the expiration of the period of redemption, to set aside two quit-claim deeds upon the premises as a cloud upon the title of the complainant, executed by the original mortgagor and his grantee, and the court held that such bill could not be maintained. The relief prayed in this case was similar to the relief prayed in Peterson *v.* Emmerson, *supra*, and was not a bill, as here, to protect the possession of the complainant under an equitable title.

In the opinions in the foregoing cases are to be found expressions which, standing alone and considered by themselves and not in connection with the facts then before the court, would seem to extend section 30 of the statute far enough to cut off and bar the equitable interest of the purchaser at a master's sale, even where he was in possession, if a deed was not taken out within five years after the expiration of the period of redemption; but it was not necessary for the proper decision of any of those cases that the court should determine that question, and what is said in the opinions of the court in deciding them, by way of argument or illustration, that was not necessary to have been said for a proper determination thereof, is *obiter dicta*, and not controlling upon the court when a case arises where the question is squarely presented and is vital to a determination of the case then before the court. In Brown *v.* Coon, 36 Ill. 243, on page 246 Mr. Justice Lawrence said: "It is a familiar rule of criticism in regard to judicial decisions, that their authority arises from what the court *decides* in reference to the facts before it, rather than from what the judge who delivers the opinion may say in illustration and support of the ruling of the bench. When it is remembered that judges are often obliged to write a hundred opinions per annum, they would be more than human if they did not occasionally use expressions of a general character, which, while perfectly true in regard to the case before them, are at the same time incorrect when pushed to extremes or applied to a totally different state of facts." And in Mayer *v.* Erhardt, 88 Ill. 452, on page 457 Mr. Chief Justice Scholfield quotes with approval the language of Chief Justice Marshall in

Cohens *v.* Virginia, 6 Wheat. 399, where he said: "It is a maxim not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those ex-
118 pressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

From what has been said it is clear that appellant is the owner of the equitable—the full beneficial—interest in the premises sought to be recovered in the ejectment suit, but that the legal title must prevail at law, and that her equitable interest will be lost to her unless the prosecution of the ejectment suit is enjoined, as in that suit she cannot plead and prove her equitable interest as a defense. That a court of chancery has jurisdiction in such state of case to enjoin the prosecution of the ejectment suit is well settled by the authorities. (Bishop of Chicago *v.* Chiniquy, 74 Ill. 317; County of Cook *v.* City of Chicago, 158 *id.* 524; McCaa *v.* Woolf, 42 Ala. 389; Smith *v.* Spencer, 73 *id.* 299; McKibbin *v.* Bristol, 50 Mich. 319; Siemon *v.* Schurck, 29 N. Y. 598.) In Bishop of Chicago *v.* Chiniquy, *supra*, it is said the basis upon which a court of chancery enjoins the prosecution of an action of ejectment is, that the complainant "has some equitable defense which a court of law cannot take cognizance of, either by reason of want of jurisdiction or from the infirmity of legal process."

It is no answer to the position that a court of chancery should grant the relief prayer for in this bill, to say that the legal title to the premises in question will still remain in appellee. Although the legal title thereto will not, by the decree, be transferred to the appellant, the appellee will, after the decree is entered, be powerless to assert the legal title against the appellant or her successors in title. The effect of the decree will be to protect the appellant and her successors in title in the possession and enjoyment of the land. We have repeatedly held, where there is an outstanding title, and a bill is filed to remove it as a cloud upon the complainant's title, that the proper practice is to enjoin the assertion of such title against the complainant by the holder thereof, his heirs and assigns,
119 and not to decree the conveyance thereof to the complainant. Barnett *v.* Cline, 60 Ill. 205; Reed *v.* Reber, 62 *id.* 240.

From a careful examination of this record we have reached the conclusion that the equities of this case as presented by her bill are with the appellant and that the circuit court erred in sustaining the demurrer thereto.

Mr. Justice Boggs: I do not concur in the decision of this case.

120 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, clerk of the supreme court, of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court at Springfield, this 25" day of Ap'l, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

121 [Endorsed:] Supreme court. Lydia Bradley v. H. W. Lightcap. Opinion filed 24th day of April, 1903.

122 Supreme Court of the United States, April Term, 1903.

LYDIA BRADLEY, Plaintiff in Error, vs. H. W. LIGHTCAP, Defendant in Error. } Bill in Equity for Injunction and Relief. Error to Supreme Court of Illinois.

To the Honorable Benjamin D. Magruder, chief justice of the supreme court of Illinois:

Lydia Bradley, the complainant in said bill, and plaintiff in error respectfully petitioning, shows unto your honor that heretofore on the 24th day of April, A. D. 1903, the supreme court of the State of Illinois, being the highest court of the State of Illinois in which a decision in said suit could be had, made its final order in the above entitled cause, then pending therein upon appeal from the circuit court of Fulton county, and the same was entered of record, affirming the decree of said circuit court of Fulton county dismissing the bill of complaint filed therein by plaintiff in error for want of equity, as will appear in full by the certified copy of the record in said cause under the hand and seal of the clerk of the supreme court of the State of Illinois, submitted herewith.

And your petitioner shows that in and by said bill of complaint and by the said final judgment of the supreme court of the State of Illinois there was drawn in question the validity and constitutionality of a certain statute of the State of Illinois, to-wit: an act entitled "An act in regard to judgments and decrees and the manner of enforcing the same by execution and to provide for the redemption of real estate sold under execution or decree" approved
123 March 22nd, 1872, in force July 1, 1872, being section 30 chapter 77 of the Revised Statutes of the State of Illinois, on

the ground of its being repugnant to the Constitution of the United States and on the ground of its being repugnant to the laws of the United States, which statute, as construed and applied by the said supreme court of the State of Illinois, complainant alleged to be repugnant to the Constitution of the United States of America, and particularly to section 10 of article 1 of said constitution, and to section 1 article 14 of said constitution, and the decree of said circuit court and the final decision of said supreme court were in favor of the constitutionality of said statute.

And petitioner further shows that there exists in this case a controversy necessarily involving the construction of section 10 article 1 of the Constitution of the United States as applicable to said statute of the State of Illinois known as section 30 of chapter 77 Revised Statutes of Illinois, as the same was construed and applied by the trial court, and as the same is now construed and applied by the said supreme court of the State of Illinois, and that the decision of that question was necessary to the determination of said cause.

And petitioner further shows that there exists in this case a controversy necessarily drawing in question the construction of section 1 article 14 known as the fourteenth amendment of the Constitution of the United States, as applicable to said section 30 chapter 77 of the Revised Statutes of the State of Illinois, as the same was construed and applied by the trial court, and is now construed and applied by the supreme court of the State of Illinois, and that the decision of that question was necessary to the determination of said cause.

And petitioner further shows that in and by her said bill of complaint it was alleged and shown that she is a citizen of the
124 United States, and that the defendant in error, under color of a certain statute of the State of Illinois, viz: section 30 chapter 77 of the Revised Statutes of the State of Illinois, is seeking to deprive plaintiff in error of her rights, privileges and immunities secured by the Constitution and laws of the United States of America in and to certain real estate in said bill mentioned and described contrary to the statutes of the United States in such cases made and provided, to-wit, section 1979 of the Compiled Statutes of the United States of America, and the decision of the trial court was against the title, right, privilege and immunity, claimed by plaintiff in error under said statute, which decision has now been confirmed by the said supreme court of the State of Illinois, in and by its said final judgment.

And petitioner further shows that there exists in this case a controversy necessarily involving and drawing in question the construction of said statute of the United States of America, viz: section 1979 of the United States Compiled Statutes and a decision as to petitioner's rights, privileges and immunities under said statute of the United States, and said decision was against the rights, privileges and immunities claimed by petitioner.

And petitioner further shows that in and by her said bill of complaint it was alleged and shown that by the laws of the land as

established by the judicial decisions of the courts of last resort, in the State of Illinois, at the date of the trust deed to E. G. Johnson, trustee for plaintiff in error in said bill mentioned and described, the equitable title passed to plaintiff in error, and after breach of condition became absolute in her as against the mortgagor and his grantees; but that since the date of said trust deed the laws of the land in said State of Illinois have been so changed by judicial decisions of the courts of last resort in said State that it is now held and decided by the said supreme court of the State of Illi-
125 nois that the title so vested in plaintiff in error is a base and determinable fee which ceases and is terminated by operation of law when the debt secured by said trust deed is barred by the statute of limitations to-wit, the said statute known as section 30 chapter 77 Revised Statutes of the State of Illinois. And it was further alleged and shown in and by said bill of complaint that the law of the land as established in the State of Illinois at the date of said trust deed entered into and became a part of the contract and could not afterwards be changed so as to deprive plaintiff in error of her substantial rights or materially impair her remedies under said trust deed without violating the Constitution of the United States of America, particularly section 10 article 1 of said Constitution; and it was held and decided by the trial court that such change of judicial decision was not contrary to the Constitution of the United States, which decision has now been confirmed by the said supreme court of the State of Illinois in and by its said final judgment.

And petitioner further shows that there exists in this case a controversy necessarily involving and drawing in question the construction of the Constitution of the United States of America as applicable to the said change of judicial construction and the law of the land in the State of Illinois, and particularly of section 10 of article 1 of said constitution, and that the decision of that question was necessary to the determination of said cause.

And petitioner further shows that there exists in this case a controversy necessarily involving and drawing in question the construction of the Constitution of the United States of America as applicable to the said change of judicial construction and the law of the land in the State of Illinois, and particularly of the fourteenth amendment of said Constitution, and that the decision of that question was necessary to the determination of said cause.

126 Wherefore your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States of America, addressed to the honorable justices of the supreme court of the State of Illinois, commanding them to transmit the record of their said proceedings to the Supreme Court of the United States of America, and that a citation may issue under the hand and seal of your honor, commanding said H. W. Lightcap defendant in error to be and appear in the said Supreme Court of the United States at Washington, D. C. within thirty days from the date thereof to show

cause if any there by why the said judgment of the supreme court of the State of Illinois should not be corrected.

And your petitioner will ever pray, etc.

JOHN S. MILLER,
MERITT STARR,
W. W. HAMMOND,
Solicitors for Petitioner.

LYDIA BRADLEY,
Per W. W. HAMMOND, *Sol.*

127 Supreme Court of the United States, April Term, 1903.

LYDIA BRADLEY, Plaintiff in Error, *vs.* H. W. LIGHTCAP, Defendant in Error. } In Chancery for Injunction and Relief. Error to Supreme Court of Illinois.

The foregoing petition and assignment of errors and record of said cause having been considered it is ordered

That a writ of error to said court be allowed and that the same be made a supersedeas, the plaintiff in error giving bond in the sum of $5000; which bond is presented herewith, the sureties being George W. Scott and Harry A. Hammond, and said bond and security have been and are approved.

In witness whereof I have hereunto set my hand this 18th day of May, A. D. 1903.

(Signed) BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

128 Know all men by these presents that we Lydia Bradley, of the county of Peoria and State of Illinois, as principal and George W. Scott and Harry A. Hammond, of the county of Stark and State of Illinois, as sureties, are held and firmly bound unto H. W. Lightcap in the penal sum of five thousand ($5000.00) dollars, for the payment of which, well and truly to be made we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of May A. D. 1903.

The condition of the above obligation is such that whereas the said H. W. Lightcap did on the 24th day of April, A. D. 1903, at a term of the supreme court of the State of Illinois then being holden at Springfield, in said State, obtain a decree confirming the decree of the circuit court of Fulton county in said State of Illinois in a certain bill for injunction and relief wherein said Lydia Bradley was plaintiff and H. W. Lightcap defendant, and for costs of said suit, to review which decree the said Lydia Bradley has prayed and obtained a writ of error to the supreme court of the State of Illinois,

Now if the said Lydia Bradley shall duly prosecute said writ of error to effect and shall moreover pay the amount of said judgment together with all costs, interest and damages accruing to said H. W.

Lightcap by reason of such writ of error in case said judgment shall be affirmed, then the above obligation to be null and void, otherwise to remain in full force and virtue.

LYDIA BRADLEY. [SEAL.]
GEORGE W. SCOTT. [SEAL.]
HARRY A. HAMMOND. [SEAL.]

Approved by—
(Signed) BENJ. D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

129 STATE OF ILLINOIS, } ss:
Stark County, }

George W. Scott and Harry A. Hammond being each duly sworn, on oath state, that they are residents of the county and State aforesaid, and that they are each of them the owners and possessors of property, in their own names and rights, free from incumbrances, and liable to execution, of the fair and reasonable value of not less than five thousand ($5000.00) dollars in real estate.

GEORGE W. SCOTT.
HARRY A. HAMMOND.

Subscribed and sworn to before me, this 11" day of May, A. D. 1903.

GEORGE S. RAKESTRAW,
Notary Public.

[NOTARIAL SEAL.]

130 STATE OF ILLINOIS, } ss:
County of Peoria, }

I, Clara E. Comstock, a notary public in and for the said county, in the State aforesaid, do hereby certify, that Lydia Bradley, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 11th day of May, A. D. 1903.

CLARA E. COMSTOCK,
Notary Public.

[NOTARIAL SEAL.]

STATE OF ILLINOIS, } ss:
County of Stark, }

I, George S. Rakestraw, a notary public in and for the said county, in the State aforesaid, do hereby certify that George W. Scott and Harry A. Hammond, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, ap-

peared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 11" day of May, A. D. 1903.

GEORGE S. RAKESTRAW,
Notary Public.

[NOTARIAL SEAL.]

131 Supreme Court of the United States, April Term, 1903.

LYDIA BRADLEY, Plaintiff in Error,
vs.
H. W. LIGHTCAP, Defendant in Error.

Bill in Equity for Injunction and Relief. Error to Supreme Court of Illinois.

Assignment of Errors.

And now comes Lydia Bradley, plaintiff in error herein, appellant in the supreme court of Illinois, and complainant in the circuit court of Fulton county, Illinois, by John S. Miller, Merritt Starr and W. W. Hammond her solicitors, and shows that in the record and proceedings and in the rendering of the judgment of the supreme court of Illinois in said cause as the same appears by the foregoing transcript thereof, there is manifest error in this, to-wit:

1. The said supreme court of Illinois in and by its said final judgment and decision erred in holding and adjudging a certain statute of the State of Illinois, to-wit: the 30th section of an act entitled "An act in regard to judgments and decrees and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree" approved March 22nd, 1872, in force July 1, 1872, being section 30 chapter 77 of the Revised Statutes of the State of Illinois, to be valid and constitutional with respect to the Constitution of the United States of America, and particularly with reference to section 10 article 1 of said Constitution, and in not holding said statute of the State of Illinois as construed and applied by the supreme court of Illinois in and by its said final judgment, unconstitutional and void under said section of
132 the Constitution of the United States of America.

2. Said supreme court of the State of Illinois erred in rendering its said final judgment in this; that said statute of the State of Illinois (more particularly described in the last foregoing assignment) as construed and applied to complainant's said mortgage contract, made and entered into prior to the enactment of said statute, by the said final judgment and decision of said supreme court of the State of Illinois, impairs the obligation of said contract, contrary to the provisions of the Constitution of the United States of America.

3. The said supreme court of Illinois in rendering its said final judgment and decision erred in holding and adjudging a certain

statute of the State of Illinois, to-wit: the 30th section of an act entitled "An act in regard to judgments and decrees and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree" approved March 22nd, 1872, in force July 1, 1872, being section 30 chapter 77 of the Revised Statutes of the State of Illinois, to be valid and constitutional with respect to the Constitution of the United States of America, and particularly with reference to section 1 article 14 being the fourteenth amendment of said Constitution, and in not holding said statute of the State of Illinois as construed and applied by the said supreme court of Illinois in and by its said final judgment, unconstitutional and void under said section of the Constitution of the United States of America.

4. The said supreme court of the State of Illinois erred in rendering its said final judgment in this; that said statute of the State of Illinois (more particularly described in the last foregoing assignment) as construed and applied by the said supreme court of the State of Illinois, in and by its said final judgment, deprives complainant of her property without due process of law, con-
133 trary to the provisions of the Constitution of the United States of America.

5. That said supreme court of the State of Illinois erred in rendering its said final judgment in this; that the said Lydia Bradley is thereby deprived of her property without due process of law, contrary to the fourteenth amendment to the Constitution of the United States of America.

6. That said supreme court of the State of Illinois erred in rendering its said final judgment in this; in not deciding and adjudging said statute of the State of Illinois (more particularly described in the first assignment of error herein) as construed and applied to complainant's said mortgage contract, to be repugnant to the Constitution of the United States of America and the amendments thereto.

7. The said supreme court of the State of Illinois erred in rendering its said judgment in this; that in and by said final judgment sustaining the validity of said statute of the State of Illinois (more particularly described in the first assignment of error herein) said Lydia Bradley is denied the equal protection of the laws of the United States of America, contrary to the provisions of the Constitution of the United States of America, and particularly the fourteenth amendment thereto.

8. The said supreme court of the State of Illinois erred in holding and deciding that the allegations of complainant's bill showing that defendant was, under color of said statute of the State of Illinois, viz: section 30 chapter 77 of the Revised Statutes of the State of Illinois, seeking to deprive her of rights, privileges and immunities secured to her under the Constitution and laws of the United States of America, did not show a good and sufficient cause of action and good and sufficient grounds for equitable relief, particu-
134 larly under section 1979 of the Compiled Statutes of the United States of America, and erred in sustaining and affirm

ing the decree of the said circuit court of Fulton county dismissing said bill for want of equity, and in not reversing the said decree.

9. The said supreme court of the State of Illinois erred in rendering its said judgment in this; that in and by said final judgment of said court said Lydia Bradley is deprived of her rights privileges and immunities secured to her under the Constitution and laws of the United States of America contrary to the statutes of the United States of America, particularly section 1979 of the Compiled Statutes of the United States.

10. Said supreme court of the State of Illinois erred in adjudging and deciding that the change of judicial decision in the State of Illinois alleged by plaintiff in error to have taken place subsequent to the date of her mortgage contract, materially affecting her title, interest, rights and remedies under her mortgage contract has not taken place in the State of Illinois as alleged in said bill, and in applying the law of the land as now judicially determined and interpreted in the State of Illinois to complainant's mortgage contract executed prior to such change of judicial interpretation of the law of the land in the State of Illinois contrary to the Constitution of the United States of America and particularly to section 10 article 1 of said Constitution, and in not adjudging and decreeing that the law of the land as established by judicial decisions and interpretation in the State of Illinois at the date of said contract enters into and becomes part thereof and cannot afterwards be so changed as to materially impair the rights and remedies thereunder, and in not determining, holding and decreeing that the law of the land in the State of Illinois has been so changed since the date of complainant's mortgage contract as to deprive her of material rights and
135 remedies thereunder, contrary to the Constitution of the United States of America.

11. The said supreme court of the State of Illinois erred in rendering its said final judgment in this; that in and by said final judgment, applying to complainant's said mortgage contract the law of the land as now established by judicial decision in the State of Illinois, and refusing to apply and enforce the remedies existing under the laws of the land in the State of Illinois as the date of complainant's said mortgage contract, the obligation of her said mortgage contract is materially impaired contrary to the constitution and laws of the United States of America.

12. The said supreme court of the State of Illinois erred in not sustaining and in overruling the first assignment of error made by appellant upon the record in said court, to wit: the court erred in sustaining said demurrer and dismissing complainant's bill.

13. The said supreme court of the State of Illinois erred in not sustaining and in overruling appellant's second assignment of error made upon the record in said court, to wit: the court erred in not overruling said demurrer and requiring defendant to answer.

14. The said supreme court of the State of Illinois erred in not sustaining and in overruling the first additional assignment of error made by appellant upon the record in said court, to wit: the circuit court erred in not holding that the certain statute of Illinois ap-

proved March 22nd, 1872, in force July 1st, 1872, entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree": and section 30 thereof, set out in said bill of complaint, did not apply to the case, right, title and equity of appellant, set forth in her said bill of complaint.

15. The said supreme court of the State of Illinois erred in not sustaining and in overruling the second additional assign-
136 ment of error made by appellant upon the record in said court, to wit: the construction and interpretation and application by said circuit court of said statute of the State of Illinois, approved March 22nd 1872, (and more fully entitled and described in the additional assignment and specification of errors, number one (1) foregoing,) was and is unconstitutional and in violation of section 10 of article 1 of the Constitution of the United States of America.

16. The said supreme court of the State of Illinois erred in not sustaining and in overruling the third additional assignment of error made by appellant upon the record in said court, to-wit: the construction and interpretation and application by said circuit court of said statute of the State of Illinois, approved March 22nd, (and more fully entitled and described in the additional assignment and specification of errors, number one (1) foregoing) was and is unconstitutional and in violation of section 10 of article 1 of the Constitution of the United States of America.

17. The said supreme court of the State of Illinois erred in not sustaining and in overruling the fifth additional assignment of error made by appellant upon the record in said court, to-wit: said statute of the State of Illinois, approved March 22nd, 1872, (and more fully entitled and described in additional assignment and specification of errors number one (1) foregoing) and section 30 of said statute, as construed and applied by the circuit court in this case, is unconstitutional, and in violation of section 10 of article 1 of the Constitution of the United States of America.

Wherefore and for other manifest errors, in violation of the Constitution and laws of the United States, the complainant in error prays that said judgment of the supreme court of Illinois and the decree of said circuit court may be reversed and set aside and held for naught and said cause remanded for further proceedings in conformity to said Constitution and laws of the United States of
137 America.

Respectfully submitted.

JOHN S. MILLER,
MERRITT STARR,
W. W. HAMMOND,
Solicitors for Plaintiff in Error.

Endorsed on cover: File No. 18,957. Illinois supreme court. Term No. 306. Lydia Bradley, plaintiff in error, *vs.* H. W. Lightcap. Filed June 1, 1903.